TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 185.

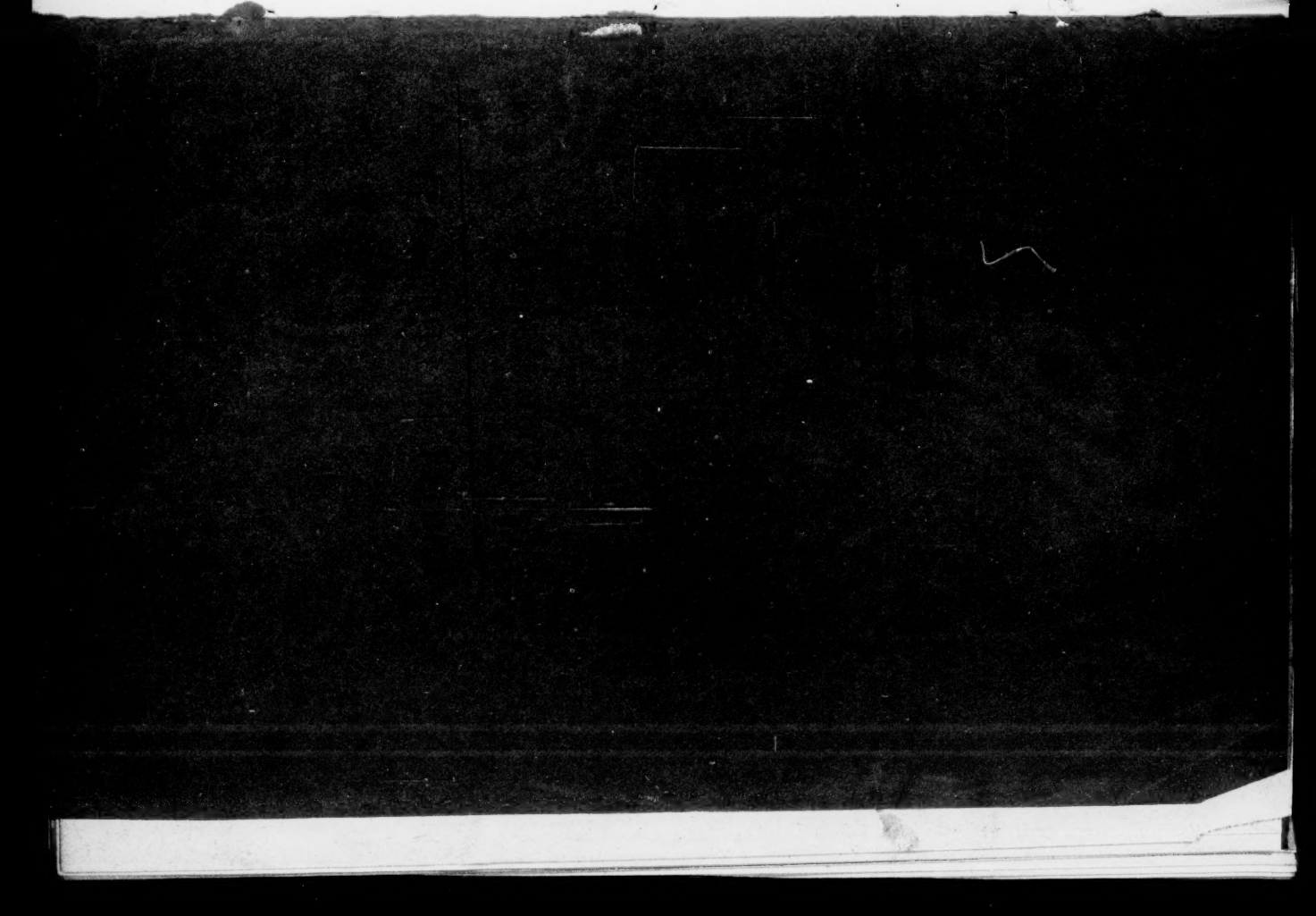
BENJAMIN BEALL & REUBEN F. BAKER, APPELLANTS,

vs.

ELIAS E. WHITE ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 17, 1874.



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Bill of complaint.—Filed May 23, 1872.

In the supreme court of the District of Columbia.

ELIAS E. WHITE, ORESTES B. DODGE, SAMUEL L. Phillips, William L. Wall, Thomas Berry, plaintiffs,
vs.
BENJAMIN BEALL, REUBEN F. BAKER, THE Freedman's Savings and Trust Company, of Washington, defendants.
} 2779. Equity docket 11.

The plaintiffs represent to the hon. supreme court of the District of Columbia—

1. That he, the said Dodge, was appointed trustee of all and singular the goods and chattels and personal property contained in a certain hotel in the city of Washington, D. C., known formerly as the Clarendon Hotel, but afterwards called the St. James Hotel, as will appear
2 by the deed bearing date April 6th, 1867, to secure the payment of the sum of $2,500.

2. That the said Phillips was appointed trustee of the same goods and chattels and personal property contained in the same hotel, as will appear by deed dated October 2, 1868, to secure the payment of the sum of $7,000.

3. That both of the said indebtednesses have become the property of the said Freedman's Savings and Trust Company.

4. That the said Phillips was appointed trustee of the same goods and chattels and personal property contained in the same hotel, as will appear by deed recorded in liber 7, fol. 197, to secure the payment of the sum of , the property of said defendants Beall and Baker.

5. That the said White was appointed trustee of the same goods
3 and chattels and personal property contained in the same hotel, as will appear by deed recorded in chattel record 608, fol. 18, to secure the payment of the sum of , the property of said defendants Beall & Baker.

6. That the said hotel in which said goods and chattels were located was and is the property of said Benjamin Beall, and for the period of some four or five months prior to the sale hereinafter referred to was occupied by a tenant who was in arrears for rent, on which judgments in attachment had been recorded by said Beall.

7. That these plaintiffs, under the authority of the said several deeds of trust, and these plaintiffs White and Phillips, in addition, under a written agreement with the tenant of said hotel, sold all and singular the goods and chattels and personal property in said hotel for the payment of the said rent and said indebtedness secured by said trusts.

4 8. That they employed the said William L. Wall and Thomas Berry as auctioneers, under the name of Wm. L. Wall & Co., to sell the same, which was accordingly done, the proceeds of sale being $5,713.82, and for distribution the sum of $3,864.42, as will appear from the annexed account of sales, which said fund as far as collected, which is about one-half of gross amount of sales, is now in the hands of said auctioneers, and the balance is not yet due, which they, the plaintiffs, offer to bring into court.

9. That since the said sale both the said Beall and Baker and said Savings & Trust Company claim to be entitled to the proceeds, which are not enough to liquidate the indebtednesses of both. And these plaint-

iffs are ignorant of what amounts are due to each, or who is entitled to priority of payment. The said parties defendant threaten these plaintiffs with suit if they should pay to the other of them.

5 These plaintiffs therefore pray that the said defendants may be compelled to interplead and state their several claims, so that the court may adjudge to whom the said proceeds of sale belongs.

That the United States writ of subpœna may be issued to the said defendants named in the caption of this bill.

And that the plaintiffs may have such other relief as the nature of their case may require.

E. E. WHITE, *Trustee.*
SAM'L L. PHILLIPS, *Trustee.*
WILLIAM L. WALL & CO.
ORESTS P. DODGE,
By S. L. PHILLIPS, *Trustee.*

Personally appeared S. L. Phillips and made oath that there is no collusion between him and any of the parties to the said bill, and

6 to the best of his knowledge there is none between any of his coplaintiffs with any of the defendants.

SAM'L L. PHILLIPS.

Subscribed & sworn to before me this 23d of May, 1872.
R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Asst. Clerk.

Summons to answer.

In the supreme court of the District of Columbia. May 23d, 1872.

ELIAS E. WHITE ET AL., COMPLAINANTS, *against* BENJAMIN BEALL ET AL., DEFENDANTS. } No. 2779. Equity dock. 11.

The President of the United States to Benjamin Beall, Reuben F. Baker, and Freedman's Savings and Trust Company, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty day' after service of this subpœna, and

7 answer the exigency of the bill under pain of attachment and such other process of contempt as the court shall award. Witness, D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Asst. Clerk.

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's return.

Not to be served; so says plffs. atty.

A. SHARP, *Marshal.*

JUNE 4TH, 1872.

8 *Answer of the F. & T. Co.—Filed June* 17, 1872.

In the supreme court of the District of Columbia.

ELIAS E. WHITE ET AL.
vs.
BENJAMIN BEALL ET AL. } 2779. Equity.

The answer of the defendant, The Freedman's Savings and Trust Company, to the bill of interpleader of the complainants.

The said Freedman's Savings and Trust Company, for answer to the said bill, says as follows, to wit:

1. That the said defendant, The Freedman's Savings and Trust Company, is a corporation duly organized in pursuance of an act of Congress entitled "An act to incorporate the Freedman's Savings and Trust Company," approved March 3d, 1865, and the several acts amendatory thereof, and doing business in the city of Washington, in the District of Columbia, by virtue of said authority.

2. This defendant is informed and believes that on or about the
9 30th day of March, 1867, Alpheus Middleton and John Hyatt, executors of the last will and testament of Benjamin F. Middleton, deceased, and Benjamin Beall, by an instrument in writing under their hands and seals, leased unto George W. Bunker and William H. Crosby certain premises in the city of Washington, then called the Clarendon Hotel, and since called the St. James Hotel, for the term of five years from the 1st day of April, 1867, for the yearly rental of $4,000, payable in equal monthly instalments, and that in pursuance of said lease said Bunker and Crosby entered upon and took possession of said premises, and as partners conducted and kept the same as a public hotel.

3. That on the 6th of April, 1867, said Bunker and Crosby being partners as aforesaid, and engaged in keeping said Clarendon
10 Hotel, and being indebted to one A. T. C. Dodge in the sum of twenty-five hundred dollars for the purchase-money of the goods and chattels and personal property in said hotel, for which sum said A. T. C. Dodge held two promissory notes each for $1,250.00, dated on said 6th day of April, 1867, payable with interest to the order of said A. T. C. Dodge in nine and twelve months after the date thereof, they executed and delivered a deed of trust to Orestes B. Dodge, bearing date on said 6th day of April, 1867, recorded April 10, 1867, in liber E. C. E., No. 1, folio 82, chattel records of said District of Columbia, by which deed they conveyed to the said Orestes B. Dodge, his executors, administrators, and assigns, all and singular the goods, chattels, and personal property in said hotel, in trust to secure the payment of the said
11 notes; said deed of trust is herewith filed, marked "Exhibit A," and referred to as a part of this answer, and is the same referred to in the first paragraph of the original bill.

4. This defendant is informed and believes, and therefore charges, that one Thomas M. Plowman was a partner in said business with Bunker and Crosby, and that he owned a one-third interest in the said lease as well as in the furniture and chattels in said hotel.

And that on or about the 2d day of October, 1868, the said partnership existing as aforesaid was dissolved, and all the interest of the said Crosby in and to the said hotel and the said chattels, being one-third

thereof, was purchased from him by said George W. Bunker and said Thomas M. Plowman, and the said Bunker and Plowman con-
12 tinued in possession, and to keep said hotel as partners, with the consent of the lessors aforesaid.

And on the said 2d day of October, 1868, the said Bunker and Plowman executed and delivered to the complainant, Samuel L. Phillips, a deed of trust, bearing date on said 2d day of October, by which they conveyed to said Phillips all and singular the goods and chattels in and about the said St. James Hotel. Said deed of trust was duly recorded on the 3d day of October, 1868, in liber No. 6, folio 317, of the chattel records of said District of Columbia, and was made to secure the payment of two promissory notes drawn by said Bunker and said Plowman, bearing date on said 2d day of October, 1868, each for the sum of $3,500.00, and payable to the order of said Crosby, with interest, in six and twelve months after date; and said notes were given to said
13 Crosby for the purchase-money of said furniture, goods, and chattels in said hotel, and in said deeds of trust mentioned. Said last-described deed of trust is herewith filed, marked "Exhibit B," and referred to as part of this answer, and is the same deed referred to in the 2d paragraph of complainant's said bill.

5. That the said notes secured by the said deeds of trust hereinbefore mentioned were purchased by and duly transferred to the defendant, the Freedman's Savings and Trust Company, and are now held and owned by said company, and there is now due on said notes about the sum of .

6. That some time in December, 1868, certain property adjoining St. James Hotel was leased by the defendant, Benjamin Beall, to the said Bunker and Plowman, to be used for hotel purposes in connection with said St. James Hotel, at the yearly rental of $1,200.00, payable monthly.

14 7. This defendant further says, upon information and belief, that the said Bunker and Plowman continued to keep said hotel and to pay rent to the lessors as well for the said addition as for the original premises, until on or about the 10 day of April, 1871, when they sold and transferred all their interest as well in the hotel premises as in the personal property therein situated, (being the same conveyed by said deeds of trust,) to one John Spicer, and that such sale to said Spicer was made by and with the consent of the said lessors; and that said Spicer entered upon and took, and for a long time maintained possession of, said St. James Hotel, and furniture and chattels therein, and kept and conducted said house as a house of public entertainment until the sale mentioned in said bill of complaint, and paid rent to said lessors for the whole of said premises.

15 8. That said Bunker and Plowman, immediately after delivering possession of said property to said Spicer, in pursuance of such sale, left said premises, and exercised no further control over them in any manner whatsoever.

9. This defendant, further answering, admits the making of the said deed of trust to said Phillips, mentioned in paragraph No. 4 of said bill, and also the making of the deed of trust to said White, mentioned in the fifth paragraph thereof, but insists that said incumbrances on said personal property were subsequent and subordinate to the deeds of trust now held by this defendant, as hereinbefore stated.

10. The defendant does not know whether or not said Beall is and was the owner of said St. James Hotel, as alleged in the sixth paragraph of said bill, and therefore requires proof of the same. And

16 this defendant does not know whether or not the tenant in possession of said premises was in arrears for rent; but this defendant denies that any judgment was rendered for such rents that is, or ever was, binding upon said property, so far as to affect the rights and interests of this defendant therein. This defendant is informed and believes that said defendant Beall, by himself, and also with other persons, has sued out pretended writs of attachment in certain pretended suits on the law side of this court, against the said George W. Bunker and the said Thomas M. Plowman, and pretends to have levied said writs of attachment on the said personal property so sold and delivered to said Spicer as aforesaid, and conveyed by the two deeds of trust owned by this defendant as aforesaid, and pretends to have obtained judgments against said Bunker & Plowman in said suits; but
17 this defendant is advised and believes, and therefore charges, that said writs and the levying thereof, and said judgments and all other proceedings in said suits, are fraudulent, void, and of none effect, so far as the rights and interests of the said Freedman's Savings and Trust Company are concerned.

11. This defendant admits that a sale of said personal property conveyed to said Dodge and Phillips was made as alleged in the seventh and eighth paragraphs of said bill, and also admits that said company did and does now claim priority of payment out of said fund so realized from such sale.

12. The said Freedman's Savings and Trust Company therefore ask that a decree may be rendered granting said company priority of payment, and that said company may be first paid the amount due on said notes for principal and interest out of said fund, and for such
18 other and further decree as may be agreeable to equity and good conscience.

[SEAL.] FREEDMAN'S SAVINGS & TRUST CO.

ENOCH TOTTEN,
Sol'r for F. S. & T. Co.

DISTRICT OF COLUMBIA, *ss:*

I, Daniel L. Eaton, being first duly sworn, do depose and on my oath say that I am actuary and managing agent of the Freedman's Savings and Trust Company, and that I have read the foregoing answer of said Company and know the contents thereof, and that the facts therein stated positively are true, and that the facts therein sated upon information and belief I believe to be true.

DANIEL L. EATON.

Subscribed and sworn to before me this seventeenth of June, 1872.
[SEAL.] GEO. W. STICKNEY,
Notary Public.

19 *Exhibit A to answer of F. S. & T. Co.*

This indenture, made this 6th day of April, A. D. 1867, between George W. Bunker and William H. Crosby, of the city of Washington, in the District of Columbia, of the first part, and A. T. C. Dodge, of the said city, of the second part, and Orestes B. Dodge, of the said city, of the third part.

Whereas the said George W. Bunker and William H. Crosby, being indebted to the said A. T. C. Dodge in and for the sum of twenty-five

hundred dollars, being for the purchase of the personal property contained in the schedule hereunto annexed, have made, signed, and delivered to the said A. T. C. Dodge two certain promissory notes, each for the sum of twelve hundred and fifty dollars, and bearing even date with these presents, and made payable, with interest from date, to the order of the said A. T. C. Dodge in nine and twelve months after date, respectively.

20 And in order to secure the payment of said notes and interest, the said parties of the first part here execute these presents.

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of five dollars, lawful money, to them now in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and delivered, and do by these presents grant, bargain, sell, and deliver, unto the said Orestes B. Dodge, his executors, administrators, and assigns, all and singular the goods and chattels and personal property in the hotel building and premises in the said city, known as the "Clarenden Hotel;" the said goods and chattels and personal property being in part enumerated and described in the Schedule A, hereunto annexed.

21 To have and to hold the said goods and chattels and personal property unto the said Orestes B. Dodge, his executors, administrators, and assigns, in and upon the trusts and for the uses and purposes hereinafter declared, and for no other use, trust, or purpose whatsoever, that is, in trust to permit the said parties of the first part to use the said goods, chattels, and personal property until default be made in the payment of said notes, or either of them, or default be made in the payment of the rent of said premises.

And upon this further trust, upon default being made in the payment of said notes or either of them, or upon default being made in the payment of the rent of said premises for the space of twenty days after the same shall be due, then and thereafter, upon the request of the holder of said note, to take immediate possession of said goods,

22 chattels, and property, and sell the same at public auction after such public notice thereof, and upon such terms of sale as said party of the third part shall deem advantageous and proper; and of the proceeds of sale first to pay all the costs and expenses thereof, and to retain as compensation a commission of five per cent. on the amount of said sale; secondly, to pay whatever may then remain unpaid of the said notes and interest, whether the same shall be due or not, and lastly, to pay the remainder, if any, to the said parties of the first part or the person or persons lawfully entitled thereto.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

G. W. BUNKER. [SEAL.]
W. H. CROSBY. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. WARD.

23 DISTRICT OF COLUMBIA,
County of Washington, sct:

I, John F. Callan, a notary public in and for the said county of Washington, in said district, do hereby certify that George W. Bunker and William H. Crosby, parties to the within deed of trust, personally appeared before me in said county, and being personally well known to me to be

the persons who executed the said deed of trust, they, said Bunker and Crosby, severally acknowledge the same to be their act and deed.

Given under my hand and notarial seal this sixth day of April, A. D. 1867.

[SEAL.] JOHN F. CALLAN,
Notary Public.

24 SCHEDULE A.

40 cottage-bedsteads.
3 mahogany "
6 walnut "
48 husk & straw matrasses, double.
2 " " " single.
18 hair mattras'es, double; 3 do., single.
68 feather pillows; 13 do., hair.
5 " bolsters; 2 do. "
28 cottage-bureaus; 3 mahogany do., marble-top.
5 walnut & marble-top bureaus; 1 do. walnut.
28 painted wash-stands; 2 do. mahogany.
2 mahogany marble-top " ; 1 walnut do.
5 walnut marble-top wash-stands; 22 dressing-tables.
4 mahogany dressing-tables; 14 walnut do. centre.
7 sofas, 2 lounges, 5 mahogany hair-cloth rockers.
6 walnut hair-cloth easy-chairs; 2 cane-seat "
65 wood & cane-seat chairs; 6 hair-cloth chairs.
24 brussels carpets, 8 ingrain carpets.
105 yds. " parlor-carpet; 15 do. "
15 setts damask curtains, with cornice.
53 comforts, 29 quilts, 50 blankets.
49 sheets, 36 pillow-cases, 21 towels.
25 10 table-cloths, 24 tablespoons, 12 knives, 18 forks.
50 dining-plates, 3 doz. soup-plates.
54 vegetable-dishes, 1 doz. cups & saucers.
29 goblets, 4 celery-glasses, 5 large pitchers.
6 stone-china fruit-dishes, 6 plated castors & bottles.
5 blk. walnut dining extension-tables.
5 mahogany " " "
1 " sideboard, 8 tea and sugar spoons.
3 waiters, trays, & tray-stands; 6 iron trays.
Steam carving-table, 2 cooking-stoves.
4 coal-stoves, (parlor,) 1 " range.
2 laundry-stoves, 10 saucepans.
3 large soup & coffee boilers, 4 carving-knives.
2 meat-cleavers, 6 pantry & pastry-room tables.
1 clothes-basket, 8 flat-irons, 4 large soup-bowls.
6 water-buckets, 4 large stone jars.
3 bake-pans.
3 wardrobes, 33 ewers & baisins, 33 cov'd chambers.
24 soup-dishes, 12 spittoons, 4 chamber-buckets.
4 rugs, 4 damask table-covers, 12 towel-racks.
3 drop-lights, 3 double chandeleirs, 28 single brackets.
5 double brackets, 26 curtains & fixtures.
5 chairs, (damask,) with linen covers.
26 2 easy-chairs, (damask,) with linen covers.
2 sofas, " " " "

12 pictures, 1 hat-tree, 3 oak tables.
41 oak dining-chairs, 32 salts, 2 plated butter-dishes.
2 syrup-pitchers.
1 set of independent steps, 32 musquito-nets.
4 refrigerators, 2 gilt-frame mirrors 8 by 3 feet.
1 gilt-frame parlor mirror, 4 by 5 feet.
2 parlor chandeleir, (six burners.)
12 hall-brackets & pendents, 2 blk. walnut mirrors.
1 mirror 18 by 14 inches, 1 do. 15 by 20 inches.
1 gilt mirror 26 by 52 in., with marble stand.
2 " " 25 by 41 " " " "
5 dark dining-chairs, 2 barbers' chairs.
2 cane-seat office-chairs, 6 wood-seat do.
1 rocking-chair, 1 oak office-table.
1 blk. walnut office-desk, 1 iron safe, 2 eight-day clocks.
1 marine clock, 3 safe-chairs.
18 cut-glass & Bohemian decanters.
54 wine and beer glasses, 3 show-cases.
1 water-cooler, 1 plated pitcher & tray.
1 doz. demijohns, 7 plated mugs.
1 plated nutmeg-sifter, 1 tobacco-cutter & jar.
27 2 marble wash-basins, 1 double marble-top wash-stand.
1 chandelier, (3 burners,) 4 double-bracket chandeliers.
5 single burners, 28 globes, 1 screen.
1 register, 1 bill-book, marble shelf & brackets.
30 Bibles, 1 water-heaters, 5 spit'oons.
40 zinc & brass stair-plates, 100 stair-rods.
1 six-gallon punch-bowl, 2 porters' bells.
1 room-rack, 3 col'd finger-bowls.
1 bar-counter, with marble slab; 1 do., blk. walnut top.
1 oyster & eating counter, 1 office-counter, (walnut top.)
2 setts of scales & weights, 3 creamers.
4 sugar-bowls, 6 butter-dishes.
Coal-shovel & monkey-wrench, market-baskets.
1 large clothes-basket.

G. W. BUNKER.
W. H. CROSBY.

Witness:
W. H. WARD.

28 *Exhibit B.*

This indenture, made this second day of October, in the year eighteen hundred and sixty-eight, between Thomas M. Plowman and George W. Bunker, of the city of Washington, District of Columbia, of the first part, and Samuel L. Phillips, of the same place, of the second part. Whereas said parties of the first part, as copartners, are indebted unto William H. Crosby in the sum of seven thousand dollars, for the purchase of the hereinafter-mentioned property from said Crosby, the same being his one-third interest therein as late copartner with said parties of the first part, and to secure the payment of which they have made and delivered to the said Crosby their promissory notes, each for three thousand five hundred dollars, bearing even date herewith, and payable at six and twelve months after date to the order of said Crosby, with interest; and whereas in said purchase it was agreed that the payment of

29 the said two notes should be secured by deed of trust as follows:
Now, to execute the said agreement, this indenture witnesseth that said parties of the first part, for and in consideration of the premises and the sum of five dollars to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and delivered, and do grant, bargain, sell, assign, transfer, and deliver, unto said party of the second part, his executors, administrators, and assigns, all and singular the goods and chattels, household and kitchen furniture and fixtures, now contained in and about that messuage and premises known as Bunker's Avenue Hotel, situate at the corner of 6th street west and Pennsylvania avenue, in said city; also the lease which the said parties
of the first part now have thereon, and all right thereunder of
30 removal; and further, all other goods and chattels, household and kitchen furniture and fixtures, which said parties of the first part may have on said premises, in substitution or renewal or addition to those now contained therein, during the continuance of this trust, and also all they may have in and about the addition which is now being erected to said hotel, during the continuance of this trust, and all rights they may have under any lease for said addition to said hotel. To have and to hold the same unto said par*ties* of the second part, his executors, administrators, and assigns, for his and their use; in trust, nevertheless, for the following uses and purposes: In trust to suffer and permit said parties of the first part to retain possession of the *first part to retain possession of* said goods and chattels and leases until some
default shall be made in the payment of said notes or either of
31 them, and upon their full payment this deed shall be void. But if said parties of the first part shall make default in the payment of said notes or either of them, when and as they become due, then said party of the second part shall take possession of said goods and chattels now in and about said premises, or those which may be after acquired as aforesaid, and said leases, and sell the same at public auction. The time, place, and terms of sale to be in the discretion of the trustee, as well as the length of notice. The proceeds of sale to be disposed of as follows: The reasonable expenses attending the execution of this trust, including a commission of five per cent. to the trustee, to be paid first; secondly, so much of said notes as are unpaid, with interest & costs. It being distinctly understood that upon a sale being made both of said notes shall be paid, whether the second note be due or not. And lastly, the surplus, if any, to be paid to said parties of the first part. And said
parties of the first part do hereby assign and transfer to said party
32 of the second part all their right of and into the policy of insurance against loss by fire, obtained on aforementioned goods and chattels, and in case of non-payment of said notes to be applied to the purposes of the trusts of this deed.

In testimony whereof said parties of the first part have hereunto set their hands and affixed their seals on the day and year first above written.

THOMAS M. PLOWMAN. [SEAL.]
G. W. BUNKER. [SEAL.]

Signed, sealed, and delivered, and stamped in the presence of—
WM. MARTIN, *J. P.*

And acknowledged before him.

33 *Joint and several ans. of defdts.—Filed Nov.* 18, 1872.

In the supreme court of the District of Columbia.

ELIAS E. WHITE ET AL. *vs.* BENJAMIN BEALL ET AL. } No. 2779, eq. dock. 11.

The joint and several answer of Benjamin Beall and Reuben F. Baker to the bill of complaint of Elias E. White and others.

These defendants, saving all benefit of exception to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or unto so much and such parts thereof as they are advised it is necessary or material for them to make answer, answering, say:

1. That on the 30th of March, 1867, the said Benjamin Beall, together with Alpheus Middleton and John Hyatt, executors of the last
34 will and testament of Benjamin F. Middleton, deceased, leased by indenture of that date, unto George W. Bunker and William H. Crosby, certain premises at the corner of 6th street and Pennsylvania avenue, in the city of Washington, then known as the Clarendon Hotel, for the term of five years from the 1st of April, 1867, and the yearly rent of $4,000, payable in equal monthly instalments; and that immediately upon the execution and delivery of said indenture the said lessees entered upon and took possession of the leased premises, and fitted up the same with furniture and household stuff necessary for the business of hotel-keeping.

2. That, as these defendants are informed and believe, Thomas
35 M. Plowman was, some time after said demise, admitted by said lessees into copartnership in the said business, and became entitled to one-third interest therein; and that subsequently, and on or about the 2d of October, 1868, the said William H. Crosby sold to his said copartners, Bunker and Plowman, his interest in said lease and furniture.

3. That the said premises after said lease, and until December, 1868, were known as "Bunker's Hotel."

4. That in December, 1868, a tenement belonging to the defendant, Benjamin Beall, in his own right, and adjoining said leased premises, was leased by him to said Bunker and Plowman at the rent of $1,300 per annum, payable monthly, the said tenement having been previously remodeled by said defendant at great expense and connected with
36 the said hotel premises. That, upon said lease of the adjoining property, the said Bunker and Plowman fitted up the same additional furniture and household stuff, and used and occupied the same in common with said hotel premises, the whole being thereafter known as the St. James Hotel.

5. That said Bunker and Plowman were subsequently delinquent in the payment of rent due in respect of both portions of said property, and that on the 30th of August, 1871, two attachments for the rent due, as well under said indenture as under the demise by the defendant, Benjamin Beall, were issued and levied on personal property on the respective premises, and that in said attachment suits judgments
37 were rendered on the 9th of December, 1871, for $925, with interest from the 1st of August, 1871, and costs, (subject, however, to a credit of $133.44, as of the 1st of September, 1871,) and for $383.31, with interest from the 1st of August, 1871, and costs, (subject, however, to the credit of $216.64, as of the 1st of September, 1871;) and that on the 30th of December two other attachments were issued and levied for

other rent, over due as aforesaid; in which suits judgments were rendered on the 7th of February, 1872, for $1,333.33 and costs, and $433.33 and costs; all which judgments remain wholly unsatisfied.

6. That on the 17th of April, 1869, the said Bunker and Plowman by deed of that date conveyed their leasehold interest as well as all the furniture and household stuff in said St. James Hotel to Samuel
38 L. Phillips, in trust, to secure the payment of a continuing credit given by these defendants, partners in the grocery business under the name and firm of Beall and Baker, to said grantors, said credit amounting to $5,000 and to continue for two years; and these defendants aver that for merchandize supplied said Bunker and Plowman on the credit of said security, and to assist them in carrying on said St. James Hotel, there is now due a sum exceeding $5,000.

7. That on the 20th of December, 1869, by deed of that date, the said Bunker and Plowman conveyed said leasehold interest, furniture, and household stuff to Elias E. White, by the name of Edmund E. White, in trust, to secure a further indebtedness to these defendants, part-
39 ners as aforesaid, amounting to $3,044.77, and they aver that said sum with interest is now wholly unpaid.

8th. These defendants admit that the said Bunker and Crosby on the 6th of April, 1867, executed a deed of trust in favor of Orestes B. Dodge, purporting to secure the payment of two notes in favor of A. T. C. Dodge, and of even date with the deed, each note being for $1,250, and notes being payable in nine and twelve months after date; and further, that said Bunker and Plowman on the 2d of October, 1868, executed a deed of trust in favor of Samuel L. Phillips, purporting to secure the payment of two notes in favor of said Crosby, each for $3,500, of even date with the deed, and payable at six and twelve months after date. And
40 these defendants further admit that Exhibit A and Exhibit B filed with the answer of the Freedman's Saving' and Trust Company in this case are the originals of said deeds executed as aforesaid; but these defendants utterly deny that said notes secured by said deeds of trust were purchased by and transferred to the said company as alleged. And as to both said deeds of trust these defendants aver that the same are fraudulent and void as against the subsequent deeds of trust aforesaid; and further, that the lien for rent under said indenture took effect at the commencement of the tenancy, and hence that said judgments are entitled to priority over any lien subsequent to such commencement, and that the personal property bound for rent did
41 not yield more than enough to pay the same; that the additional furniture and household stuff placed in the tenement demised as aforesaid by Benjamin Beall was not bound by said deeds of trust and did not pass thereunder, and that as soon as the same was acquired and placed in said tenement it became by law subject to the statutory lien for rent. And these defendants further say in respect of the first of said deeds of trust, they are informed and believe and expect to prove that one of the notes mention' therein was paid about two years after the date of said deed, and that on or about the 19th of April, 1870, there was a payment of $550 on the other note, which, with said credit endorsed, was passed to a certain Samuel A. Peugh, in the spring of 1872, after it had been overdue for upwards of three years;
42 and in respect of the second of said deeds of trust they are informed and believe and expect to prove that the first note mentioned therein was paid at maturity, and that the second note, though not paid at maturity, was subsequently fully paid and surrendered to said Bunker and Plowman, or their attorney; and these defendants charge

that said second note after such payment came into the possession of said company. And these defendants further say that the whole interest of said company in any note or notes mentioned in said deed of trust is not as pretended in said bill and the answer of said company, but as collateral security for another debt contracted by same party, to these defendants unknown, and they claim that said company
43 is secure without resorting to said collateral, and that if the priority asserted by said company be to any extent allowed these defendants ought to be substituted to its rights. And these defendants further say that the notes held by the said company, two in number, were taken under circumstances of suspicion which wholly deprive it of the relation to said paper of a bona-fide purchaser for value, and they file herewith a statement, marked "Defendants' Exhibit A," of the only claim set up or pretended by said company under said deeds of trust, or either of them, on the 2d of April last.

These defendants demand proof of every fact connected with the priority alleged by said company.

44 9. These defendants, further answering, show that on or about the 10th of April, 1871, the said Bunker and Plowman undertook to transfer their leasehold interest in the said St. James Hotel, together with the furniture and household stuff in and about said premises, to a certain John Spicer, but that said transfer was in violation of the covenant in said indenture requiring the consent in writing of the lessors, which consent was never given by said lessors or any of them, nor was said transfer ratified or acquiesced in by them or any of them. It is true that the said John Spicer entered into possession, and continued therein until the sale.

10. That executions were duly issued upon the aforesaid judg-
45 ments and levied on the property attached, and that said property was in the actual custody of the marshal of this District when sold; and that the said Elias E. White and Samuel L. Phillips also took possession, subject to said custody, and under the aforesaid deed of trust, to secure these defendants, and that finally, after much opposition on the part of said Spicer, who applied to this court for an injunction to prevent the sale, without success, and who claimed that since said pretended transfer to him he had added largely to said furniture and household stuff, the alleged sale was had; and that, pending the same, the defendant, Benjamin Beall, bought out the alleged interest of the said John Spicer.

46 11. These defendants do not admit the correctness of the account filed with said bill. The charge of double commissions by said Samuel L. Phillips is especially objected to, as is also the charge in behalf of said Orestes B. Dodge, who, as these defendants are informed and believe, had no sort of connexion with the sale, but during the same and for many months before was absent in the State of Arkansas; and these defendants pray that said account may be restated by the auditor of this court.

12. Further answering, these defendants say that before said sale it was agreed between their counsel and said company that said sale should be subject to the equities of said parties as they then stood.

47 And, having fully answered the said bill, these defendants pray to be hence dismissed with costs, &c.

BENJ. BEALL.
REUBEN F. BAKER.

W. D. DAVIDGE,
Solr. for Defts.

DISTRICT OF COLUMBIA, *ss:*

We, and each of us, do solemnly swear that we have read the foregoing answer by us and each of us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

Sworn to and subscribed before me this 18th day of Nov'b'r, A. D. 1872.

SAM'L C. MILLS, *J. P.* [SEAL.]

48 *Exhibit A to defts.' Beall & Baker's answer.*

PRINCIPAL OFFICE FREEDMAN'S SAVING' & T. CO.,
Washington, D. C., Apr. 2, 1872.

DEEDS OF TRUST.—1st. O. B. Dodge, trustee, recorded Apl. 10th, 1867, note $1,250, Apl. 6, 1867, with int.; endorsement for $550, Apl 19, '70, int. 6 %.

2d. Deed to S. L. Phillips, trustee, recorded Oct. 10th, 1868; note Oct. 2, '68, $3,500; endorsement $1,000, Dec. 21, 1868; 750, Jan'y 5, 1870, int. 6 %.

The above are collateral for note $2,735.10, bearing int. at 10 % from May 2d, 1871, as per request of Mr. Davidge.

D. L. E.

Replication.—Filed Dec. 14, 1872.

FREEDMAN'S S. & T. CO. ET AL.
vs.
BEALL ET AL. } 2779. Equity.

The plaintiffs hereby join issue with the defendants.

WHITE & PHILLIPS,
Complainants.

49 *Commission and return.*

In the supreme court of the District of Columbia, the 5th day of June, 1873.

ELIAS E. WHITE ET AL.
vs.
BENJAMIN BEALL ET AL. } No. 2729. Equity docket 11.

The President of the United States to John J. Latting, esq., New York City, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these you, or any two of you, are invested with power and authority to examine John Spicer, esq., as a witness for the Freedman's Saving' and Trust Co., in the above-entitled cause, upon the interrogatories annexed to this commission; and therefore you are
50 hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said witness to come before you, and then and there examine him, on oath or affirmation, upon the said interrogatories, and reduce his testimony into writing to be signed by said witness; and having so done annex the same

to this writ, closed up under your seals, and make return thereof into said court with all convenient speed.

Witness, D. K. Cartter, chief-justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

51 In the supreme court of the District of Columbia.

ELIAS E. WHITE AND OTHERS *vs.* BEALL AND BAKER AND OTHERS. } Equity. No. 2729.

Interrogatories to be administered to John Spicer, a witness for the defendant, the Freedman's Saving' and Trust Company, to be produced, sworn, and examined before John J. Latting, esq. of New York City, acting in pursuance of a commission issued to him by said court in the above-entitled cause.

1st. What is your name, age, and occupation; and have you any interest, directly or indirectly, in the above cause?

2d. Did you at any time in 1871 purchase from Messrs. Baker and Plowman any interest in the lease and fixtures, furniture, &c., of
52 the St. James Hotel in Washington City? And, if yes, state what you bought, and the date of such purchase.

3d. Did you have any conversation with Mr. Beall respecting his own interests or those of others about this transfer before the same was made? If you did, state how many interviews you had before such transfer, where you had them, and what was said touching the proposed sale to you.

4th. Did you have any conversations with Mr. Beall at the time of the transfer; and, if you did, what was said?

5th. Did Mr. Beall, to your knowledge, make inquiries touching your financial capacity, or did he say anything to you about making or having made such inquiries; and if he did, what did he say about
53 it, when did he say it, and where did he say it?

6th. What was the agreement or understanding, if any, between you and Mr. Beall as to the arrears of rent and other indebtedness of Bunker and Plowman?

7th. Did Bunker and Plowman know about this arrangement?

8th. What was the agreement and understanding, if any, with Beall as to the surrender of the lease by Bunker and Plowman, and as to your becoming the tenant of the St. James Hotel in lieu of Bunker & Plowman?

9th. Was there anything said by Bunker and Plowman as to the surrendering their term under the lease; and, if yes, what was it, and was such statements made in presence of Mr. Beall?

10th. Did Mr. Beall seem to be willing or reluctant about the
54 transfer of the hotel to you by Bunker & Plowman? What did he say in this conversation?

11th. Did Beall, after the hotel passed into your possession, say anything to you about holding Bunker & Plowman for the rents, instead of you; and if he did, when did he first speak of it, and what did he say?

12th. What was the amount of the rent in arrear when you took the house?

13th. Did you assume and agree with Beall to pay this back-rent?

14th. What was the agreement with Beall as to the liability of Bunker & Plowman for the rent in arrear, and also as to the future rents? Who was to be held for them, you or Bunker & Plowman?

15th. Who spoke to you first about making this purchase, Beall or Bunker and Plowman?

55 16. What agreement, if any, was made between you and Beall as to the debt of $8,044.77, secured on the furniture?

17th. Did you offer to pay to Beall any of the arrears of rent due at the time you took possession of the house; and if you did, what was the nature of your offer? State fully.

18th. How much, if any, rent did you pay to Beall?

19th. Did you or not keep and fulfil your engagements and agreements with Beall; and if you did not, state why you did not?

20th. With whom did you transact your business relating to the hotel; with all the parties interested in it, or with Beall only?

56 21st. If you transacted the business with Beall, whom did he act for and whom did he represent, so far as you know?

ENOCH TOTTEN,
Solr. for F. S. & T. Co.

In the supreme court of the District of Columbia.

WHITE ET AL. *vs.* BEALL ET AL. } Eq. No. 2779.

Cross-interrogatories to be administered to John Spicer, under commission issued to John J. Latting, esq., of New York City.

1st. Nothing to ask.

2d. Who first spoke to you in regard to this purchase? Did you see Bunker & Plowman before you saw Mr. Beall about making the purchase?

57 3d. If you had any conversation with Mr. Beall on the matter, state when, where, who, if any one was present.

4th. Same as 3d cross-interrogatory.

5th. What, if anything, did you say to Mr. Beall about your financial condition? What was your financial condition at that time? Did you authorize any one to see Mr. Beall for you and to make any representations in regard to your means to purchase and ability to keep a hotel? Did you or any one for you make any representations of such a nature to him?

6th. Was this agreement, if any such was made, in writing? Was any one present when it was made? Did you give Beall any additional security for these arrears?

7th. You were to purchase from Bunker & Plowman the hotel property as it stood; that is, you were to stand in their shoes, were you not?

58 8th. If there was an agreement between you and Beall, was it not that you should take the place of Bunker and Plowman under their lease?

9th. Same as 8th.

10th. Did Mr. Beall ever consent formally to the transfer from Bunker & Plowman to you? Did he consent in writing?

11th. When did you make the first payment of rent to Beall? In whose name were the receipts made out, if any were given you?

12th. None.

13th. If you did, when, in writing or not; if not, was any one present? Where was this conversation?

14th. None.

15th. Where did you first make Beall's acquaintance, and how? Did not Mr. Hopkins or Lawrence Bess introduce you at your own request?

16th. None.

59 17th. If any such offer was made, was it in writing; if not, who was present at the making of it?

18th. Were not suits brought by Beall for rent, which fell due while you were in possession, against Bunker & Plowman?

19th. None.

20th. "

21st. From where do you derive your knowledge?

DAVIDGE & LOVEJOY,
Solrs. for Defdts. Beall et al.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties take the examinations and depositions of all and every witness and wit-
60 nesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter before the said commission is closed be produced to and left with you by either of the said parties; so help you God.

JNO. J. LATTING.

Taken and subscribed before me the 10th day of June, A. D. 1873.
[SEAL.] T. B. WAKEMAN,
Notary Public, N. Y. City & County.

To the supreme court of the District of Columbia:

John J. Latting, commissioner, to whom was directed the annexed commission from the said court to take the testimony of John Spicer, esq., as a witness in a certain suit now pending in the said court,
61 wherein Elias E. White and others are plaintiffs, and Benjamin Beall and others are defendants, respectfully reports and certifies that in obedience to and in pursuance of the said commission, on the 10th day of June, A. D. 1873, he was first duly sworn and did take the oath hereto annexed, with the caption "Commissioner's oath."

That the said commissioner, John J. Latting, on the day and year aforesaid, at his office, No. 93 Nassau street, in the city of New York, in the State and county of New York, did call the said John Spicer and cause him to come before him; that he did examine him on his, the said John Spicer's, corporal oath, by him the said commissioner, John J. Latting, duly administered, touching his knowledge or remem-
62 brance of anything relating to the cause aforesaid; that he, the said commissioner, John J. Latting, did not cause any notice of the said commission to be given to the parties to the aforesaid suit, they being residents of the District of Columbia, in the United States of America; that the annexed answers of the said John Spicer to the interrogatories and cross-interrogatories annexed to the aforesaid commission were reduced to writing by the aforesaid commissioner, and signed by the said witness.

On the said examination, Enoch Totten, esq., appeared as solicitor and of counsel for defendants, the Freedman's Saving and Trust Company, and William H. Green, esq., appeared as counsel for the defendants, Beall and Baker.

63 And the said proceedings, with the annexed commission, interrogatories, and cross-interrogatories, are now closed under the hand and seal of the said commissioner, to be sent by mail, express, or other safe conveyance to the supreme court of the District of Columbia by the aforesaid commissioner under his hand and seal.

In witness whereof I, John J. Latting, the said commissioner, have hereunto set my hand and seal at the city of New York on this 10th day of June, A. D. 1873.

JNO. J. LATTING, [SEAL.]
Commissioner.

Deposition of John Spicer, a witness produced, sworn, and examined, the tenth day of June, A. D. 1873, at the city of New York,
64 in the county and State of New York, before John J. Latting, commissioner, under and by virtue of a commission issued out of the supreme court of the District of Columbia, in a certain cause therein pending and at issue between Elias E. White and others, plaintiffs, and Benjamin Beall and others, defendants, as follows:

JOHN SPICER, of the city of New York, furnisher of railroad supplies, aged forty-nine years, being duly and publicly sworn, pursuant to the direction of the writ of commission hereto annexed, and examined on the part of the defendant, the Freedman's Saving and Trust Company, doth depose and say as follows:

First. To the first interrogatory he saith: My name is John Spicer. My age is forty-nine years. My occupation is that of furnishing
65 supplies to railroads. I have no interest directly or indirectly in the above cause.

Second. To the second interrogatory he says: I did. I bought the entire fixtures and furniture in the hotel, and the lease, and the stock of groceries and liquors, and the improvements that Bunker & Plowman had made, and their entire interest in the hotel.

Third. To the third interrogatory he says: Yes, sir; I had quite a number of interviews; perhaps half a dozen, I don't know but more, before the transfer. They were had in Mr. Beall's office, in the hotel building. I went in to ascertain from Mr. Beall, by request of Mr. Plowman & Bunker and Mr. Beall, the affairs and position that Plow-
66 man & Bunker held with Mr. Beall in the St. James Hotel property. I told Mr. Beall that I thought of purchasing it, and I could do so; had made the contract with Plowman & Bunker, providing it was satisfactory to him. He said he was anxious to have me purchase it. I had a copy of the lease with me. Mr. Beall and I looked over the lease, and he explained the condition of the payments that were then due and how much I would have to pay, and that he would extend the lease, providing I would assume the back indebtedness, including interest on the trust-deed and back rent, or any debt that he held against the St. James Hotel, except their individual or company account for groceries furnished the hotel. After having these
67 several interviews with Mr. Beall, I went on and made the purchase; closed up the trade. MR. Beall at these interviews repeatedly said he was dissatisfied with Bunker and Plowman as tenants,

and that he had made enquiries about me and hoped I would buy them out.

Fourth. To the fourth interrogatory he says: At the time of the transfer I told Mr. Beall that I had got possession of the house; what I had paid for it; the amount of money paid down on executions to constables and other creditors in order to get possession of the house. The officers had attached some of the property at that time and remained there constantly watching the property, so that it could not be removed. Mr. Peugh, the owner of one of the trust-deeds, was there for the same purpose. I then at that time paid Mr. Beall one month's back
68 rent for the month of April, four hundred and forty-one dollars and sixty-seven cents; this was for rent due from Plowman & Bunker, before my rent commenced, and this was a portion of the money due Mr. Beall from Plowman & Bunker that I assumed to pay according to arrangements that I had made with Mr. Beall, and the conditions of his agreeing to extend the lease. I at that time bought a bill of goods of Mr. Beall & Baker in my own name and paid the money and opened an account on their books, which from time to time run up from $2,000 to $3,000 *dollars*.

(The counsel for the defendants, Beall & Baker, objects to this last clause of the answer as not repo'sive to the interrogatory, and as immaterial and irrelevant.)

69 Fifth. To the fifth interrogatory he says: At one or some of the interviews that I had with him he said that he understood or had learned that I had means to purchase and run the house. I think I told him how much money I had, or could command, and was to pay to Plowman & Bunker on the purchase, which I did. I paid the money the day I took possession of the house. This conversation with Mr. Beall was in his office.

Sixth. To the sixth interrogatory he says: That I should assume and pay the back rent and the interest on the trust-deed that he held of $8,000 and some odd dollars, also all the liens on the property, but not any private debts that were not liens.

70 To the seventh interrog. he says: Yes, sir.

Eighth. To the eighth interrogatory he says: Mr. Beall suggested that he would confer with his partners, the Middletons, and he thought on his advice they would agree to give a new lease direct to me, in place of the old lease, for ten years, and that the mortgage held by him should not be enforced until the expiration of the lease. As I understood it, at the time I took possession of the house there was no objection, and he was very anxious to have me take possession of the house and to get them out. But when I went in to pay the next*s* month's rent, a month after that, he said he didn't recognize me as the tenant, and he made out the receipt in their name, which called my atten-
71 tion to it. It was the agreement and understanding with Beall that the lease to Bunker & Plowman was to be surrendered and that I was to become the tenant in their place.

Ninth. To the ninth interrogatory he says: Mr. Plowman said to Mr. Beall in my presence that the transfer of the lease and the possession of the house was to be given to me, and was so understood. Mr. Plowman & Mr. Bunker had no interest in it from that time. Mr. Beall assented to it.

Tenth. To the tenth interrogatory he says: He seemed to be willing, and not only willing but anxious to have me take it. He said that he had had a great deal of trouble with those gentlemen and was anxious to get them out of the house.

Eleventh. To the eleventh interrogatory he says: I don't know
72 that he said that to me. If he did it must have been over a month after I took possession. He did not say so when I took possession nor when I paid the April rent.

Twelfth. To the twelfth interrogatory he says: Four hundred and forty-one dollars and sixty-seven cents on the main building, and that on the addition was about two hundred dollars, I think.

Thirteenth. To the thirteenth interrogatory he says: Yes, sir.

Fourteenth. To the fourteenth interrogatory he says: It was my understanding with Mr. Beall that Mr. Plowman & Bunker had nothing to do with the management of the house in any shape or form, Mr. Beall receiving all the money from me for rents that was paid during the
73 whole time of my occupying the house. I understood that Bunker and Plowman were to be discharged from all liability under the lease. I understood that I was to be held for the rents, and not Bunker & Plowman.

Fifteenth. To the fifteenth interrogatory he says: Bunker & Plowman first spoke to me about making this purchase.

Sixteenth. To the sixteenth interrogatory he says: I was to pay the interest on the debt and the principal was not to be enforced till the end of the lease to Bunker & Plowman, which had six years more to run, including the renewal; three years or more of the original lease had then expired.

Seventeenth. To the seventeenth interrogatory he says: I offered
74 to pay and did pay so much of the back rent as I have stated in my previous answers I did pay.

Eighteenth. To the eighteenth interrogatory he says: I have already stated the amount in my previous answers.

Nineteenth. To the nineteenth interrogatory he says: No, sir. One reason was, after being in the hotel some time, perhaps three months or more, he refused to give me a receipt for rents in my name, and another reason was that I was losing money in the house. Another reason was he had previously agreed not to enforce the $8,000 deed of trust until the end of the term, and notwithstanding that agreement he advertised under the deed and sold the property and came in and took possession, without giving me any notice.

75 Twentieth. To the twentieth interrogatory he says: With Mr. Beall only; but he assumed to act for the other parties also.

Twenty-first. To the twenty-first interrogatory he says: I think he acted for and represented all the parties interested in the hotel property.

Witness here hands the commissioner a statement showing the amounts paid him to Mr. Beall during the time he, witness, was in the hotel; same is marked "Exhibit A" and hereto annexed.

First. To the first cross-interrogatory witness says:

Second. To the second cross-interrogatory he says: Plowman & Bunker. I saw them first.

76 Third. To the third cross-interrogatory he says: I cannot specify who were present at each conversation. I think Mr. Beall was present in the office, and heard some of the conversations. Mr. Plowman was also present at some of them. I cannot now specify where or when the conversations took place, or who were present, any more definitely than I have in the answers to the direct interrogatories.

Fourth. To the fourth cross-interrogatory he says: I make the same answer as I have already made to the third cross-interrogatory.

Fifth. To the fifth cross-interrogatory he says: I told Mr. Beall that

I had money; that I could command enough means to make this
77 purchase in accordance with the bargain made with Plowman & Bunker; that I had had experience in keeping a hotel before. I paid into the hotel thirteen thousand dollars. I supposed, from my knowledge of hotel-keeping, I was perfectly able to run this hotel successfully, and I the first ten months I invested the above-mentioned sum of thirteen thousand dollars in the hotel, which I never got back.

I never authorized any one to make any such representations as are enquired about in this cross-interrogatory, nor did any one for me make any such representations, to my knowledge.

Sixth. To the sixth cross-interrogatory he says: No such agreement was made in writing; no such security was given. When the
78 agreement was made, Mr. Beall's son may have been present. Mr. Plowman was present.

Seventh. To the seventh cross-interrogatory he says: Yes, sir; I was to purchase the property as it stood.

Eighth. To the eight' cross-interrogatory he says: Yes, sir; until there was a new lease given.

Ninth. To the ninth cross-interrogatory he says: Yes, sir; until there was a new lease given.

Tenth. To the tenth cross-interrogatory he says: Yes, sir; he did consent formally, but not in writing.

Eleventh. To the eleventh cross-interrogatory he says: April 29th, 1871. I don't think, when the first payment was made, any receipt was given. The first receipt that was given me was, I think, made out in the name of Plowman & Bunker, and all the others were in the same way.

79 Twelfth. None.

Thirteenth. To the thirteenth cross-interrogatory he says: On the 29th of April, 1871; not in writing. Mr. Plowman was present, I think. The conversation was in Mr. Beall's office, but previous to the time of paying the first rent.

Fourteenth. None.

Fifteenth. To the fifteenth cross-interrogatory he says: It was along about the first days of April, 1871. I think it was either Plowman or Bess who first introduced me; it was not at my request.

Sixteenth. None.

Seventeenth. To the seventeenth cross-interrogatory he says: There was no offer in writing. I did offer to pay the rent, and did pay it.
80 I don't know that any one was present at the making of this offer, except Mr. Plowman. The offer was in the agreement with Mr. Beall, which agreement was made when Mr. Plowman was present.

Eighteenth. To the eighteenth cross-interrogatory he says: Yes, sir.

Nineteenth. None.

Twentieth. None.

Twenty-first. To the twenty-first cross-interrogatory he says: From Mr. Beall.

JOHN SPICER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this tenth day of June, before

JOHN J. LATTING,
Commissioner.

81 EXHIBIT A.—JNO. J. LATTING, *Comm'r.*

At the execution of a commission for the examination of John Spicer

as a witness between Elias E. White and others, plaintiffs, and Benjamin Beall and others, defendants, this paper writing was produced by the witness and by him deposed unto at the time of his examination before

JNO. J. LATTING,
Commissioner.

Ap'l 29th.	Rent	$441 66
June 3.	"	441 66
July 1.	"	441 66
Aug. 4.	"	300 00
Sep. 1.	"	400 00
	Rent	$2,024 98

82

	Bro't over	$2,024 98
	Cash paid to Beall & Baker for mdse.	$2,597 95
	Total	$4,622 93

Improvements & repairs expended on hotel since the 20th of Nov., 1871, over 800.00.

By bills rendered.

83 In the supreme court of the District of Columbia.

WHITE ET AL. }
v. } Equity. 2779. Doc. 11. April 11th, '73.
BEALL ET AL. }

THOMAS W. PLOWMAN, of lawful age, a resident of Washington, D. C., a witness produced and sworn, deposeth and saith:

I was a member of the firm of G. W. Bunker & Co. in 1868. Mr. Crosby retired from the firm in the fall of the next year. He remained in the firm about a year after I came in. I think Bunker and Plowman bought one-third interest of Crosby in October, 1868, and Crosby went out at that time. (Exhibit B, filed with answer of Freedman's Saving' and Trust Company, shown to witness.) That is my signature.

Bunker and I sold out to Spicer April 10, 1871, and gave him possession on the 28th or 29th April, 1871.

(It is agreed by counsel that a copy, certified by examiner, of a
84 contract between Thomas M. Plowman and George W. Bunker on the one part, and John Spicer of the other part, dated April 10, 1871, may be filed as an exhibit in lieu of the original, subject to exceptions.

Witness shown an original paper, copy whereof is filed as above.)

This is the original contract, signed by Bunker and myself.

(Mr. Lovejoy, for defendants, Beall et al., objects that the contract, being witnessed, should be proved by the witnesses.)

Spicer was to pay $18,500, together with some additions put in afterwards, amounting to nearly $19,000. I state now that the consideration was $19,250. My recollection is that there were three months' rent due to Beall and Baker at the time. I think one month's payment had been made. There was a memorandum of figures given by Mr. Baker to Mr. Henckle. I saw the memorandum.

(Objected to and memorandum called for.)

Mr. Spicer was to assume the payment of all the rent due. Mr. Beall was perfectly conversant with this, because we were in consulta-
85 tion about it several weeks. He most assuredly consented to look to Spicer for the rent, and to discharge Mr. Bunker and myself, for we would not be so foolish as to turn over the house if we would have to pay the rent. I further say that Mr. Beall was anxious and solicitous to consum'ate the transfer to Mr. Spicer. We always transacted business with Mr. Beall; sometimes Mr. Baker received money from us, but only acting as clerk. This transaction was made with Mr. Beall. We had a conversation with Mr. Beall about this contract with Spicer—showed him the contract. He was anxious we should consum'ate the transfer. Said he had made inquiries in regard to Mr. Spicer, and was now satisfied, and stated to me that Mr. Spicer wanted an additional lease, (naming the time, I think ten years, including the balance of the lease of Bunker and Plowman,) which he had agreed to give him. Spicer took possession of the property the 28th or 29th April, 1871—I think 29th. I find the last transaction of Bunker and Plowman recorded in the hotel-blotter to be dated the 28th April, 1871. The house
86 was turned over on the evening of the 29th. Mr. Spicer gave me $3,400 in cash. I conferred with Mr. Beall immediately, in his store next door, and compared the figures of amounts to be assumed by Mr. Spicer and to be paid to Mr. Beall by him. They agreed with Mr. Beall's account. They had been furnished to me previously by Mr. Beall. Beall expressed himself perfectly satisfied, and we parted the best of friends, and I supposed that was the last of my transactions with the house. I had no more to do with it. Bunker was employed by Spicer as clerk. Remained as clerk I do not know how long. I continued to board in the house and paid my board. Had nothing further to do with the house. I had no further transactions with Mr. Beall in relation to the house. He never demanded rent of me in person, or sent a note to me demanding it, to my knowledge. He never told me he looked to me or held me responsible for the rents. I have no recollection of such a circumstance. I received one notice of a suit for rent under a lease some months after we had turned over to Spicer. I think I
87 enclosed it to Spicer, not taking time to read it, supposing it was the first one. Some time after I received another notice, and I took occasion to read it. I noticed it was suing Bunker and Plowman for rent under a certain lease. I put it into my pocket, and went down to the hotel to see Mr. Spicer to see what it me'nt. My impression is I did not see Mr. Spicer, but saw Mr. Bunker, who informed me that he had received one of the same kind. I then went to see Mr. Beall for explanation. He said that Mr. Spicer had not kept his agreement with him in regard to the arrearages of rent. I remarked to him that I did not want to be annoyed. He said it was a matter of no importance, or something to that effect—no importance to us; that the law required him to give such notice, and as our names were in the original paper, it was necessary to use our names (or words to that purport) as a matter of form. He stated in addition that all he wanted was for Spicer to keep his agreement with him; that he would do all he could for him and for the hotel. He then stated what the agreement was, and said, "You know what the agreement was." I assented and left him,
88 and have not seen him since to speak to him. This conversation took place first in front of the store or the hotel, on the pavement or steps. My recollection is that I met Mr. Beall coming from breakfast or dinner, or something of the sort. Mr. Beall allowed us $8,600, and

the cost of the entire improvements was between $16,000 and $17,000, or somewhere thereabouts.

(Mr. Lovejoy objects to testimony as to cost of improvements as irrelevant.)

We were to bear the expense of putting the hotel in order. Mr. Beall made the allowance and gave us certain privileges in consideration. When I sold out to Mr. Spicer, taking it for granted that things ended there, I was short about $21,000, and the amount of other bills assumed afterwards, that Mr. Spicer did not, amounting to several thousands. I have not a dollar's interest in this controversy that I know of.

(Mr. Lovejoy, for defendants, Beall et al., enters general objection to all foregoing testimony in regard to conversations between witness and Beall in respect to the transfer of the lease, furniture, &c., of the hotel to Spicer.)

89 Cross-examined by Mr. Lovejoy:

I was an original member of the firm of Bunker and Crosby. I was a silent partner. Mr. Beall knew that I was interested in the house during the year that I was there. Mr. Henckle, representing Mr. Spicer, was present at my conversations with Mr. Beall in relation to the transfer two or three times; the conversations were almost daily. Mr. Baker was there one or two times. I announced to Mr. Beall that Mr. Spicer had made a proposition to purchase, before any contract was made. I did not sell until I had conferred with Mr. Beall, and until Mr. Beall was satisfied with the terms of the transfer to Spicer. I conferred with Mr. Beall every day, and almost every hour, when anything new pertaining to this had developed itself. I gave Spicer possession of the house, I think, on the 29th April, 1871. I showed Mr. Beall the contract either one or three days after the date of it. He did most positively agree to it. There was no misunderstanding on that subject at the time. He not only agreed to it, but I was indebted to Mr. Beall for valuable aid in consum'ating the transfer. All I was waiting for to

90 turn over the house was the money.

Question. If, as you say, Mr. Beall, two or three days after the date of the contract, assented to it, why was it that you conferred with him on the 29th April, 1871, in regard to the figures of the amounts assumed by Mr. Spicer?

Answer. My answer is this, that in concluding the transfer and turning over the house, I thought it was my duty to go in and review the figures with Mr. Beall, to see if they agreed with those of Mr. Spicer at that time.

Question. Did Mr. Beall, or either, or any one of the lessors assent, in writing, to the transfer of this lease to Mr. Spicer?

Answer. I don't think they were ever asked to. They were not asked, for the reason that the sale was made based on a new lease to be made by Mr. Beall to Mr. Spicer for a longer period.

I think Bunker and Plowman were indebted (at the time of the

91 transfer to Spicer) to Beall and to the estate he represented, and to Beall and Baker, a little over $10,000. Spicer assumed that indebtedness. He assumed to pay it in lieu of paying us the money. He paid us in cash $3,400, for which he holds a receipt. I am as certain of that as of anything I have testified to. He paid Mr. Beall about the same time, in my presence, $441.67, and agreed to pay the balance in a certain time, three months, I think. I do not know what their contract was. I have no knowledge of any additional security given by Mr. Spicer to Mr. Beall to secure the payment of our in-

debtedness assumed by them. I never knew that any was asked. We demanded that he should satisfy Mr. Beall or give us the money, and he did satisfy Mr. Beall. I had known of Mr. Spicer for a long time before this transaction. I had not a very intimate acquaintance with him, but had a speaking acquaintance for sometime before. Mr. Bunker knew him better than I did. I did not recommend him to Mr. Beall. Spicer and Beall had talked this matter over long before Bunker and I knew of it. I know this from Mr. Beall's own words.

92 The hotel and the addition to it were improved. I am an architect, and superintended and did the whole of the improvement. I did it all myself. I did not give Mr. Beall an estimate of the cost of the improvements. Mr. Beall obtained an estimate on the plans I made, which estimate was about $12,000. (Witness here shown paper marked "Exhibit T. M. P., No. 1.")

This is a contract between Benjamin Beall and myself, agreeing to do what is therein set forth. He was to pay what is specified therein.

Question. Was not a letter received by Bunker and Company, dated on or about April 28, 1871, informing them that Mr. Beall would not consent to the transfer of the hotel and the lease to Mr. Spicer.

Answer. Not at that time or any other. It is the first I ever heard of it. If such a letter had been left at the hotel, it is very likely it would have been handed right to me; it is very likely I should have seen it.

93 Redirect by Mr. Totten:

Question. What was the understanding between Mr. Beall and you and Spicer as to the terms on which he (Spicer) was to hold the property from Beall?

(Objected to.)

Answer. He was simply to step into our shoes, to take what we had and to pay our indebtedness to Mr. Beall; one month's rent was paid, as demanded by Mr. Beall, and the balance was agreed to be paid within 3 months, I think, which was accepted by Mr. Beall. Mr. Henckle was present when the arrears of rent were paid; there was to be an additional lease for, I think, five years.

THOS. M. PLOWMAN.

Examination adjourned until Monday, the 14th April, 1873, at 2 p. m.

JNO. CRUIKSHANK,
Examiner in Chancery.

94 Know all men by these presents that we, George W. Bunker and Thomas M. Plowman, *have*, for and in consideration of the nineteen thousand two hundred and fifty dollars cash in hand, do hereby sell and transfer and assign unto John Spicer, clear of all incumberances, all our right, title, estate, and interest of and unto the household and kitchen furniture and fixtures in the messuage known as the St. James Hotel, in the city of Washington, District of Columbia, also our right and title of and unto said lease of said premises, this tenth day of April, 1871.

THOMAS M. PLOWMAN.
G. W. BUNKER.

Witness our hands in the presence of—
W. O. MOOR.

Settlement, to wit: Lease deed of trust due Beale and Baker of eight thousand and forty-four dollars	$8,044
Cash in hand	11,206
Total	$19,250

I certify that the above is a true copy of the original paper.

JNO. CRUIKSHANK.

APRIL 11, 1873.

95 This agreement, made the tenth day of July, A. D. 1868, between Benjamin Beall, of the city of Washington, D. C., of the first part, and Thomas M. Plowman and Co., of said city, of the second part, witnesseth:

That the said Thomas M. Plowman and Co., parties of the second part, for and in consideration of a certain sum of money hereinafter mentioned, do hereby agree to erect and construct, or cause to be erected, a building upon the premises next adjoining the hotel known as Bunker's Avenue Hotel, (located at the corner of Sixth street and Pennsylvania avenue,) said building to be used as an addition to said hotel, and to be constructed in a thoroughly substantial manner, to the complete satisfaction of the proprietors of said hotel and of the party of the first part in this agreement; said building to correspond in all respects (in its front) with the front of the present hotel, and to be built to the full height of the same, according to the plan prepared by Starkweather and Plowman, which is hereto annexed, except so much of said
96 plan as represents and appertains to the mansard roof, which will be omitted in the construction. The inner arrangement of said building to correspond with the specifications herewith, excepting such portions as relate to the mansard roof.

It is hereby further agreed that the parties of the second part do guarantee to so protect the store on said premises, now occupied by the party of the first part, that he shall be enabled to transact his regular business therein during the whole time that the above-mentioned building shall be in process of construction and until the completion thereof.

And the parties of the second part do further agree to furnish all material and labor of whatsoever kind may be needed for the erection of said building, whether mentioned in the specifications or otherwise, and to proceed with all due diligence and haste, (consistent with safety,) giving all needed protection from the weather to the adjacent property.

97 The said Benjamin Beall, the party of the first part, for and in consideration of the erection of said building, doth hereby agree to pay to the said Thomas M. Plowman and Co., parties of the second part, the sum of eight thousand two hundred and four dollars, in the following instalments, to wit: The sum of one thousand dollars upon the signing of this agreement; the sum of one thousand dollars when the third-floor joist are laid; the sum of one thousand dollars when the fourth-floor joist are laid; the sum of two thousand dollars when the roof is put on complete and the front up; the sum of one thousand five hundred dollars when the building is plastered; and the last instalment, the sum of one thousand seven hundred and four dollars, being the balance of the full sum above mentioned, when the said building shall be fully completed.

The parties of the second part do also agree to construct across two-thirds of the combined front of the above-mentioned building and the

present hotel building, at the second story, a balcony, such as is described in the accompanying specifications.

98 It is specially agreed by and between the said parties, that there shall be no charge or allowance made for extras in said building, but should it be found necessary to repaint and sand the front of the present hotel building, that the parties of the second part will cause the same to be done in a satisfactory manner for an additional sum of five hundred dollars.

In witness whereof the said Benjamin Beall and Thomas M. Plowman and Co., parties hereto, have set their hands and affixed their seals the day and year aforesaid.

BENJ. BEALL. [L. S.]
THOMAS M. PLOWMAN & CO. [L. S.]

Sealed and delivered in the presence of us—

_____ _____.
G. W. BUNKER.

99 APRIL 16TH, 1873.

WHITE ET AL. }
v. } Equity.
BEALL ET AL. }

GEORGE W. BUNKER, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the Freedmen's Trust and Savings Company, deposeth and saith:

My connection with the St. James Hotel in this city began about the first April, 1867. I was a partner with William H. Crosby in carrying on the hotel. We took a lease from Middleton and Beall and Hyatt, in the name of George W. Bunker and William H. Crosby. (Witness here shown paper marked "Exhibit G. W. B., No. 1.") This is the original lease between Alpheus Middleton and John Hyatt, executors of Benjamin F. Middleton, deceased, and Benjamin Beall, of the first part, and George W. Bunker and William N. Crosby, of the second part, dated March 30, 1867.

100 Question. How long did the partnership between you and Crosby continue?

Answer. From the date of this lease—which is March 30, 1867—until October 2, 1868.

Question. Was the partnership then dissolved; and, if so, how?

Answer. It was dissolved verbally the same as it was formed, with the exception of a written assignment by Crosby which terminated his business relations with me in relation to the hotel. (Witness here shown written paper marked "Exhibit G. W. B., No. 2," and attached to Exhibit G. W. B., No. 1.) This is the written assignment prepared at the time by Mr. Phillips, or at his office.

Question. Who composed the firm after that.

Answer. George W. Bunker and Thomas M. Plowman; the name of the firm was G. W. Bunker & Co.

(Counsel for Beall et al. objects to the admissibility of the assignment.)

101 Question. How long did the firm of Bunker & Co. continue to run the hotel?

Answer. About four years. Plowman was known in it about three years. It was Bunker & Co. when Crosby and myself took it.

Question. Can you give the date when you ceased running the hotel? What did you do with it when you got through?

Answer. About the latter part of April or 1st of May, 1871, we turned over to Spicer everything connected with the hotel. The papers will show the date; I am not good at dates. It may have been as late as the middle of May, 1871.

Question. Do you know the date when Spicer took possession of the property?

Answer. I could not tell without looking at my books; could not tell from memory.

Question. After Spicer took possession of the hotel did the firm of Bunker and Company have any further control over it or
102 connection with it?

Answer. Not as far as the proprietorship was concerned, Spicer having bought us out. I remained with him as clerk on a salary.

Question. Did Plowman have anything further to do with it?

Answer. Not with the hotel properly, but there were matters that were unsettled between him and me. His connection and mine with the hotel ceased entirely at the time of the sale to Spicer, except that I was clerk, as stated before.

Question. With whom did you transact your business generally in regard to the hotel property, as far as the landlords were concerned?

Answer. With Benjamin Beall.

Question. Did you know anything of the other lessors in the business?

Answer. Not in a business connection.

APRIL 16, 1873.

Question. Did you have any conversations with Mr. Beall
103 about the proposed sale to Spicer during the negotiations with Spicer? And, if so, state when and where, and what was said.

Answer. I had several; in his private office in his grocery store, adjoining the hotel, about a month previous to the sale. I had three or four conversations with Mr. Beall. I first stated to him our circumstances financially and spoke of Mr. Spicer as having proposed to buy the hotel, and asked his advice in the matter as to whether it would be agreeable for us to sell to Mr. Spicer, and his opinion as to Mr. Spicer's ability to manage the hotel successfully. Our interview terminated in nothing positive at that time, but he would make inquiries regarding Spicer, as to his ability, and financially and otherwise, and see me again. That was the sum and substance of the first interview. At a subsequent interview he had made the foregoing inquiry and was anxious to accept Spicer as his tenant and anxious that we should sell the furniture and fixtures of the hotel to him, after which the sale was consum'ated.

104 Question. What passed between you and Mr. Beall touching your future responsibility as tenant and Spicer's responsibility as tenant, if anything?

(Objected to because the responsibility of the parties in respect to Beall and the other landlords was fixed by the lease.)

Answer. Spicer was to assume the same responsibility that we had; the papers show our responsibility. Our responsibility ceased on Spicer's assuming the same—assuming the proprietorship of the hotel.

Question. Was there any rent in arrears at that time; and, if so, how much?

Answer. That question I could not answer without referring to our books. From memory, I think, two months, ending April 30, 1871.

Question. What arrangement was made about this back rent, if any?

Answer. I was not present and have no personal knowledge. Mr. Plowman, Mr. Spicer, and Mr. Beall arranged all the detail of
105 the sale, as they informed me.

(Information objected to.)

Question. Did you have any conversations with Mr. Beall at the time about these arrears of rent? And, if so, what it was.

Answer. Our conversation was in relation to the entire debt, which included the rent, which Spicer was to assume and pay.

Question. What was the other debt to which you refer?

Answer. Deeds of trust on furniture and fixtures of the hotel.

Question. Who owned these deeds of trust which you speak of, and how much did they amount to?

(Objected to because the deeds will show.)

Answer. Mr. Beall held two; they amounted to $8,000 and some odd dollars.

Question. What did Mr. Beall say about taking Spicer for pay instead of you?

Answer. He was anxious to transfer our indebtedness to Spicer.

(Answer objected to because not responsive to the question.)

106 Question. Did Mr. Beall assign any reason for his anxiety to take Spicer's obligation to pay instead of that of Bunker & Co.?

Answer. He assigned the reason that Mr. Spicer's future prospects were very flattering, he having obtained judgment in the Court of Claims for some $39,000 against the Government, and, acting on the advice of Judge Hughes in the matter, Mr. Spicer's attorney, had no doubt but that the money would be paid at the expiration of ninety days from the time judgement was rendered.

Question. Did he say anything about Bunker and Company's future prospects?

Answer. That was a matter that was thoroughly discussed by us, and we considered it impossible for the hotel to relieve itself or for us to relieve the hotel of its accumulated indebtedness.

(Answer objected to.)

Question. Did you at any time ask Mr. Beall to sign a paper relating to Spicer's license?

Answer. A short time after selling out to Spicer, or after the
107 sale was consum'ated to Spicer, it became necessary to have the license transferred. To do this it became necessary to obtain the usual blank form which requires the signatures of six freeholders residing in the same square on which the hotel is located, and in procuring these I first called on Mr. Beall, who readily signed the application for transfer, after which I obtained the others.

(Witness here shown paper, copy of which is filed herewith, and marked "Exhibit G. W. B., No. 3.")

Question. Did Mr. Beall sign that paper?

Answer. He did.

Question. How long did you continue with Mr. Spicer, as his clerk, in the Saint James Hotel?

Answer. From the time of the sale until about the middle of July following; over two months.

Question. Did Mr. Spicer manage the house as a hotel for the entertainment of guests during that period?

Answer. He did.

108 Question. About how many rooms are there in that hotel?

Answer. The capacity of the hotel proper is about sixty rooms for guests.

Cross-examined:

Question. Did you ever obtain the consent in writing of Benjamin Beall to any assignment of your lease?

Answer. I don't know that we did; didn't consider it necessary, as it consisted of personal property.

(Answer objected to so far as not responsive.)

Question. So far as your knowledge extends, was any written consent to the transfer to Spicer obtained from Mr. Beall?

Answer. I don't know of any.

Question. Did you ever apply to Mr. Beall for his written consent to transfer to Spicer?

Answer. I never did. I did not consider it necessary.

(Opinion of witness objected to.)

Question. Did you ever apply to Alpheus Middleton and John Hyatt, executor of Benjamin F. Middleton, or to either of them, or did any one, to your knowledge, make application to them, or either of them,
109 for their or either of their consent to the transfer of your lease?

Answer. I never made application, nor did any one to my knowledge. Our business was transacted entirely with Mr. Beall.

Question. To your knowledge, was the consent of the above parties, or either of them, obtained to the transfer?

Answer. I have no knowledge of any transaction of the kind.

Question. When did Thomas M. Plowman become your partner in this business of hotel-keeping?

Answer. He became an active partner in October, 1868, when Crosby sold out.

Question. What was he before that time?

Answer. He was what I suppose would be considered a silent partner.

Question. Was he jointly interested with you in the management of the hotel, and in its profits and losses?

Answer. Not particularly in its management, but financially he was interested.

Question. Were you financially equally interested?

110 Answer. We were, in its profits.

Question. What was the arrangement between you and Plowman before Crosby sold out?

Answer. We had no written partnership. Our arrangement was verbal.

Question. What was your arrangement, written or verbal?

Answer. Crosby and Plowman were each to put in an equal amount of capital against my ability and knowledge of hotel business, and the profits, if any, were to be equally divided.

Question. Did Plowman put in his proportion of capital?

Answer. He did.

Question. How much?

Answer. I could not answer that; not from any disinclination to answer it, but I would have to go over a long set of books.

Question. About how much?

Answer. He went on and aided us in various ways—repairs on the hotel, payments for furniture, and so on.

111 APRIL, 16, '73.

Question. In the arrangement, what amount of capital was he to advance in bulk?

Answer. $3,500, the same amount as Crosby.

Question. The transfer by you to Spicer was in writing, was it not?

Answer. The bill of sale was in writing.

Question. Was not your transfer of your interest under the lease in writing?

Answer. It was contained in the bill of sale.

Quession. How much money did Spicer pay you?

Answer. That question I cannot answer without referring to our books.

Question. Did he pay you $11,206?

Answer. Not to my knowledge. I have knowledge. As far as I can state from memory, there was only paid $3,500.

Question. What is the meaning of $11,206 mentioned in the settlement written below the bill of sale now shown to you?

Answer. I do not know.

Question. What did Spicer agree to pay for the assignment of
112 the interest of Plowman and yourself in the lease, as well as the furniture and fixtures?

Answer. I think the sum finally agreed upon was $19,250, $20,000 being the sum first fixed.

Question. Was that amount to be paid you and Plowman for your interest in the lease, furniture, and fixtures?

Answer. Only a small portion of it, the balance to be transferred to our creditors.

Question. How much was to be paid you and Plowman?

Answer. $3,500.

Question. Then Spicer bought the interest of Plowman and yourself in the lease, furniture, and fixtures for $3,500, subject to the encumbrances upon them?

Answer. He bought the entire property of the hotel for $19,250, but we were to receive out of that only $3,500.

Question. Then, the consideration of the sale so far as you and Plowman were concerned was $3,500, was it not?

Answer. The consideration in ready money paid was $3,500,
113 and the consideration of his assuming the indebtedness of the house, making $19,250.

Question. What is the meaning in the bill of sale of the words "clear of all incumberances?" Do you know?

(Objected to.)

Answer. I could not answer that, as I am not familiar with papers of that kind.

Question. Do you recollect making an affidavit in the case of John Spicer against E. E. White and others, about the fifth of March, 1872?

Answer. I do not now; I have no recollection of it. Any testimony that I may have given at that time my physical and mental condition at that time was such that I cannot recollect. I have a recollection of some things.

Question. Do you not recollect swearing to an affidavit at that time?

Answer. I do not. I have no recollection of it. My habits were such that I don't recollect it.

Question. If that affidavit stated that the sale to Spicer was made with the full approval of all the lessors in the lease, would that fact be correct?

(Objected to because it calls for a legal opinion.)

114 Answer. My friends do not hold me responsible for any statements I may have made in the latter part of March and April,

1872, but I now recollect things clearly in relation to the sale of the hotel as far as I had any connection with it.

G. W. BUNKER.

Examination adjourned until Monday, April 21, 1873, at 2 p. m.

Exhibit G. W. B., No. 1.

This indenture, made this thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, between Alpheus Middleton and John Hyatt, executors of the last will and testament of Benjamin F. Middleton, deceased, late of the city of Washington, in the District of Columbia, and Benjamin Beall, of said city, of the first part, and George W. Bunker and William H. Crosby, of said city, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the payment of the rent and performance of the covenants
115 hereinafter mentioned, on the part of the said parties of the second part, their executors, administrators, and assigns, to be paid and performed, have demised, granted, and to farm let*ten*, and by these presents do demise, grant, and *and* to farm let unto the said George W. Bunker and William H. Crosby all that hotel building and premises situate and being in square or reservation marked and lettered "B," at the intersection of "Sixth street west" and "Pennsylvania avenue," in said city of Washington, and heretofore and at this time known as and called the "Clarendon Hotel," together with all the ways, rights of ways, premises, and alleys, and all rights, privileges, and advantages to the said hotel building belonging or in any wise appertaining.

To have and to hold the said hotel building and premises, with the appurtenances, unto the said George W. Bunker and William H. Crosby, their executors, administrators, and assigns, from the first day of April, A. D. 1867, for and during until the full end and term of five
116 years from thence next ensuing, fully to be completed and ended, yielding and paying therefor yearly and every year during the said term to the said parties of the first part, their heirs and assigns, the yearly rent of four thousand dollars, in current money of the United States, to be due and payable in equal monthly installments, on the last day of each and every month during said term: provided always, and this agreement is made with these express terms, and none other, that if it shall happen that the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days next after any of the days of payment thereof herein specified and determined, that then and thereafter and immediaately upon notice thereof being given in writing to said parties of the second part, or posted upon the premises, the tenancy hereby created shall cease and determine, and the same shall be and become a tenancy at will, and be determined as prescribed by act of Congress.

117 And the said parties of the second part, their executors, administrators, and assigns, do hereby covenant, promise, and agree to and with the said parties of the first part, their heirs and assigns, that they, the said parties of the second part, their executors, administrators, and assigns, will well and truly pay to the said party of the first part, their heirs and assigns, during the said term hereby determined, the yearly rent above reserved, in the manner and at the times prescribed as aforesaid. And the said parties of the first part, their heirs and assigns, do also covenant, promise, and agree to and with the said parties of the second part, their executors, administrators, and

assigns, that they, the said parties of the second part, their executors, administrators, and assigns, on the payment of the rent and performance of the covenants hereinbefore mentioned and reserved, on their part respectively to be paid and performed, shall and may, peaceably and quietly, have, hold, use, occupy, and possess and enjoy the above-demised premises, with the appurtenances, for and during the aforesaid
118 term of five years, without any let, trouble, or interruption of them, the said parties of the first part, their heirs and assigns, or any other person or persons whomsoever, claiming by or through or under them.

And further, that the said parties of the second part shall not let or sublet the premises hereby demised or any part thereof to any person or persons whomsoever during the term hereby demised, without the written consent of the said parties of the first part being first had therefor.

And further, that they the said parties of the second part, at and upon the expiration of said term or said further and additional term, or other sooner legal determination thereof, peaceably surrender and give up said demised premises in good order and condition, casualties by fire and reasonable wear and tear excepted.

And further, the said parties of the first part do hereby covenant and agree to and with the said parties of the second part, their executors, administrators, and assigns, that they the said parties of the first part shall and will, at and upon the expiration of the term hereby de-
119 mised, grant and demise unto the said parties of the second part, their executors, administrators, and assigns, the hotel and premises hereby demised, for and during a further term of five years from thence next ensuing at and upon the same rent, covenants, and agreements as are herein contained: Provided, however, that application for said extension and renewal be made in not more than six months nor less than three months before the expiration of the term hereby demised.

In testimony whereof the said parties of the first and second parts hereto have hereto set their hands and seals on the day and year first herein before written.

ALPH. MIDDLETON, *Executor.* [SEAL.]
JNO. HYATT, *Executor.* [SEAL.]
BENJ. BEALL. [SEAL.]
G. W. BUNKER. [SEAL.]
W. H. CROSBY. [SEAL.]

120 Signed, sealed, and stamped in presence of—
R. MIDDLETON.
R. F. BAKER.

Three (3) months' rent of said premises is hereby abated and released in consideration of improvements and repairs to be put upon said hotel by Bunker & Crosby.

BENJ. BEALL.
ALPH. MIDDLETON, *Executor.*
JNO. HYATT, *Executor.*

For value received, I do hereby assign, transfer and set over all my right, title, interest, and claim, of and into the foregoing lease.
Oct. 2nd, 1868. W. H. CROSBY. [SEAL.]

Exhibit G. W. B., No. 2.

Know all men by these presents that I, William H. Crosby, for and in consideration of the sum of seven hundred dollars, secured to
121 be paid to me by Thomas M. Plowman and George W. Bunker, do hereby sell, transfer, and assign unto the said Plowman and Bunker all my right, title, estate, and interest of and into the household and kitchen furniture & fixtures in the messuage known as Bunker's Avenue Hotel, in the city of Washington, District of Columbia; also, all my right & title of and into the lease of said premises.

W. H. CROSBY. [SEAL.]

Witness:
SAML. T. PHILLIPS.

Exhibit G. W. B., No. 3.

CITY OF WASHINGTON, *June 26th*, 1871.

To the mayor of the city of Washington:

The undersigned, commissioner of the Fourth (4th) ward, and six freeholders "residing on the same square the applicant resides on, or next adjacent square or square opposite," do certify that we have personally examined the premises for which application for a license to keep
122 a hotel, tavern, or ordinary has been made by , and that we are satisfied that the said John Spicer has provided himself with suitable and proper accommodations for travelers or guests in the house now occupied by him on square B, on Pa. ave. & Sixth street, with at least three good bed-chambers, exclusive of those used by him or any member of his family or domestics, with two good beds and bedsteads, and suitable bedding therefor, in each of such chambers; or the same number of such beds, bedsteads, & bed'ing, in a greater number of such chambers.

GEORGE FOLLANSBEE,
Commissioner of the Fourth Ward.
BENJ. BEALL,
JOSEPH PLATZ,
PETER F. BACON,
CHARLES STOTT,
JOSEPH B. BRYAN,
P. COHEN,
F. W. PLEIGGE,
Freeholders.

123 Whereas John Spicer is desirous of obtaining a license to keep a hotel on square B, fronting on Pa. ave. & 6th street, in the fourth ward of the city of Washington, we, the undersign', white housekeepers, residing on the same side of said square, and on side of the square fronting opposite, do certify that we are well acquainted with the said John Spicer, and know him to be of legal responsibility and good character; that the public convenience requires the establishment of such a hotel, tavern, or ordinary, and do recommend the issuing of a license to the said John Spicer for the purpose aforesaid.

F. W. PLIRGGE.
L. V. LOUMERS.
ERNEST WANGEMAN.
AUGUST BACHUS.
JOHN LYKEW.
FAYETTE GREEN.
FRANKLIN TENNEY.

I certify that the above recommendation is signed by a majority of the white housekeepers residing on the side of square B, fronting
124 on Pa. ave., and on the side of the square fronting opposite, and that said hotel, tavern, or ordinary, has rooms for the accom'odation of guests.

GEO. FOLLANSBEE,
Commissioner of the 4th Ward.

WHITE ET AL. }
vs. } Equity. No. 2779. Aug. 19, '73.
BEALL ET AL. }

GEORGE W. STICKNEY, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the Freedmen's Bank, deposeth and saith:

I am actuary of the Freedmen's Saving and Trust Company.

Question. Does your bank hold any notes made by Bunker and Crosby or Bunker and Plowman? And, if so, describe them, state how much is due on them, and for what purpose your bank holds them.

125 Answer. We hold one signed by Thomas M. Plowman and George W. Bunker, dated Oct. 2, 1868, for $3,500, on which has been paid, December 25, 1868, $1,000; January 5, 1870, $750. (A copy of this note filed, marked "Exhibit G. W. S., No. 1;" also copies of two notes marked "Exhibit G. W. S., Nos. 2 & 3." All copies verified by examiner after examination with originals.) The first note we took as security for a note of George W. Bunker & Co., endorsed by Thomas M. Plowman, Mar. 10, 1870. That was for 60 or 90 days, and was renewed from time to time until May 2, 1871, when we took Spicer's notes in lieu of the first note, and also adding to the amount $975.$\frac{10}{100}$, the amount of the note that Mr. Peugh held. When we took the Spicer note we delivered up the other note to Bunker and Company. We hold the two notes (G. W. S., Nos. 1 & 2) as collateral for Spicer's note, G. W. S., No. 3. The whole of Spicer's note is due. There have been no payments on it. The $1,250 note, (marked "G. W. S., No. 2,") was the one held by Peugh. We took it from him. He sold it himself.

126 Cross-examined:

Question. When did your bank first have possession of the two notes of Plowman and Bunker and Bunker and Crosby, marked "G. W. S., Nos. 1 & 2?"

Answer. The one of Oct. 2, 1868, we had possession of March 10, 1870. The one of April 6, 1867, we had May 2, 1871.

Question. From whom did you get the first one of these notes referred to?

Answer. From G. W. Bunker & Co.

Question. Then G. W. Bunker & Co. applied to you for a discount secured by their own paper and that secured by a deed of trust?

Answer. Yes.

Question. G. W. Bunker & Co. were Bunker and Plowman, were they not?

Answer. I think so, at that time.

Question. Is your bank in the habit of discounting overdue paper at the instance of the makers and when in the possession of the makers?

127 Answer. No, sir. Unless we examine them and find the title all right, and so forth.

Question. What do you mean by finding the title all right? When the paper offered to you is in the possession of that maker?

Answer. We examine the record and find no release of the notes, and no evidence of its ever having been paid.

Question. But if the maker of the note has it in his possession, do you not regard that as evidence of payment?

Answer. I do not. Real-estate paper is good until it is released. That is, paper secured by a deed of trust?

Question. Was this real-estate paper?

Answer. No, sir.

Question. Then you regard paper secured by a deed of trust and taken up by the maker as capable of being put again upon the market as a valid security; am I right?

(Objected to because it calls for the opinion of the witness.)

Answer. Yes.

128 Question. Then I consider that in your view paper secured by deed of trust never looses its vitality until the release of the deed of trust?

(Objected to.)

Answer. Yes.

Question. Have you the application for a discount when the note (Exhibit G. W. S., No. 1) was placed with you?

Answer. I have.

Question. Let us have it, if you please.

(Witness hands paper marked "Exhibit G. W. S., No. 4.")

Question. Suppose papers secured by deed of trust has been paid and not released, would you discount that paper at the instance of the maker?

(Objected to.)

Answer. Yes.

Question. And of course you would take it as collateral?

Answer. Yes.

129 Question. Whose note did you take when Exhibit G. W. S. No. 1 passed into your possession? How long did that note run, and when was it retired, and by whom?

Answer. We took the note of G. W. Bunker & Co. at 60 days. It was retired by John Spicer, May 2d, 1871, after having *having* been renewed from time to time.

Question. What other collaterals did you take when you discounted the note of G. W. Bunker & Co.?

Answer. I don't think of any other. I am not sure there were no other'. I have not the books. There was nothing that I know of except the policy of insurance, the deed of trust, &c.

Question. I come now to the second note (G. W. S. No. 2) which passed into your possession on May 2, 1871. From whom and in what transaction did you take that note?

Answer. We took it from Samuel A. Peugh, May 2, 1871. Spicer wanted to take up note (Exhibit G. W. S. No. 2) and also to retire the note of Bunker & Co., then remaining in the bank, secured by G. W. S.

130 No. 1, for which he gave his note, Exhibit G. W. S. No. 3. We gave up the note of G. W. Bunker & Co. to G. W. Bunker & Co., I suppose.

The note surrendered was for $1,750. We paid 985 $\frac{10}{100}$ to Peugh, and kept the balance because Bunker & Co. owed us $1,750 with interest at that time.

Question. When you took the Dodge note from Peugh, the endorsement of $550 as of April 19, 1870, was upon it, was it not?

Answer. It was.

Question. The note was largely overdue, was it not?

Answer. Yes; about a year or so.

Question. What other collateral did you take when the Spicer note was transferred to you?

Answer. Did not take any.

Question. Did you take from Peugh the deed of trust securing the Dodge note?

Answer. I don't know. Yes; we did take it. After reflection, I am sure we did take it.

Question. Who endorsed the Spicer note?

Answer. No one.

131 Question. When you took the Spicer note, was not Plowman a creditor of the bank?

Answer. No, sir.

Redirect:

Question. From whom did you get the note and deed of trust for $3,500, (Exhibit G. W. S., Aug. 20, '73?)

Question. Do you know from whom you received note for $3,500 marked "Exhibit G. W. S. No. 1?"

Answer. I do not.

Question. From whom did you receive note marked "Exhibit G. W. S., No. 2?"

Answer. From Samuel Peugh, (objected to,) Aug. 20, '73.

Question. You state in your cross-examination that you got the $3,500 note marked "G. W. S., No. 1," from G. W. Bunker & Co. Do you still adhe*ar* to that statement?

Answer. No, sir; I would not like to swear pos*a*tively from whom it came. I asked yesterday if I could amend that. I examined the

132 books and could find no record as to whom it was paid. If it was paid by money there would be no record of the person; if by check, there would be.

Question. Did you have personal knowledge of that transaction as far delivery of papers and payment of money was concerned?

(Objected to.)

Answer. No.

G. W. STICKNEY.

AUG. 20, '73.

Thomas M. Plowman recalled:

Question. About the 10th March, 1870, did you negotiate a lo*ne* for Bunker & Co. from the Freedmen's Savings and Trust Company; and if yea, how much money did you get, and what security did you give the Trust Company for the same?

Answer. I can't tell the amount of money I got as to dollars

133 and cents, but can give the substance. A certain Mr. Soran held this note for $3,500, part of it having been paid. He held it for a season and demanded payment therefor, and I made a personal appeal to Col. Eaton to help me by taking up the note from said Soran and holding it. He required me to put the application in writing, and gave the money either to me for Soran or to Soran. The money went to Soran—some $1,700 or $1,880. The $3,500 (G. W. S. No. 1) note was

a deed of trust note, and about one-half the money was paid. I got Col. Eaton to take up the balance of the note. My impression is that Soran brought the note to the bank and received the money from its authorized agent. I know he got the money.

Question. At the time of this negotiation with Col. Eaton, had this note in question been paid by Bunker & Co. or by you, or any part of it?

Answer. This $1,750 had been paid, no more. I was driven into a very tight place and was necessitated to get Col. Eaton to help me by taking up the note from Soran.

134 Question. Has any other payment in addition to this $1,750 been made on this note in question by Bunker & Co., or by you, or any other person for you or them?

Answer. So far as I know, it is still due. When I left the St. James Hotel the amount was due the Freedmen's Bank. Our negotiation was made subject to this note.

Question. It is alleged in the answer of Mr. Beall and Mr. Baker that this note of $3,500 has been fully paid by Bunker & Co. What do you say about that allegation?

Answer. I say that they allege what is false, and I believe they know so; and I will give you my reasons for it. Mr. Beall was annoyed at the persistency of Soran or his agent, for of course it was the trustees, I presume, he was pushing, and I made known to Mr. Beall that I had located the note with the Freedmen's Bank to relieve his mind as well as my own.

135 Cross-examined:

Question. Do you know from whom Mr. Soran got this note you speak of?

Answer. I think Mr. Soran got it from Crosby. He paid Crosby part on account. I say positively he got it from Crosby. He had paid Crosby part, and Crosby was impatient for the balance of $1,750. Mr. Cross negotiated with Mr. Soran for me, and Mr. Soran went to Mr. Sam'l L. Phillips and paid him the money for me, and Mr. Phillips had the words "without recourse to Crosby" written on the note.

Question. How did you come to act for Mr. Crosby in regard to the negotiation of this note with Mr. Soran?

Answer. I was not acting for Crosby; I don't know that the note belonged to Crosby at that time. I was acting for G. W. Bunker & Co., and Mr. Phillips was trustee, and I think he did advertise this note to be sold, as trustee; I am not positive on that score, but it was

136 driven up to the last notch b Mr. Phillips, as Mr. Beall knows as well as I do. Mr. Cross negotiated for me to get a man to take up the note and carry it. When he would not carry it any longer, I got the Freedmen's Bank to carry it.

Question. How long after this transaction was it that the note was transferred to the Freedmen's Bank?

Answer. I would not attempt to say from memory. The transactions of the two dates will show. I don't know precisely how long Soran carried it. It was to the time agreed upon, whatever that was.

Question. This note was overdue, was it not, and, if so, how long?

Answer. It was considerably overdue; I don't remember how long.

Question. How long did the Freedmen's Bank agree to carry the note?

Answer. There was no specified time; I paid interest from time to time, but don't recollect how long. It was more from favor to me than as a matter of business that Col. Eaton did this.

137 Question. Did the bank make any demand on you for the payment of that note ?

Answer. There was no particular demand. The colonel may have asked me how that matter was being fixed up. I was in almost daily contact with him in relation to the building of the bank.

Redirect:

(Note marked "G. W. S., No. 2" here shown to witness.)

The balance of this note has never been paid by us (Bunker & Co.) I got something from the bank to show how much indebtedness there was on the house at the time of the negotiation; some kind of a statement.

Recross-examined:

(Exhibit G. W. S., No. 2 again shown to witness.)

I had nothing to do with the transfer of this note to the bank.

The bank never made any formal demand of this that I know of. We sold the house subject to it. They may have made a demand;

138 I don't know.

THOS. M. PLOWMAN.

Examination adjourned until Friday, 22d August, 1873.

Exhibit G. W. S., No. 1.

No. , fol. .] WASHINGTON, D. C., *Oct.* 2, 1868.

$3,500. One year after date we promise to pay to the order of William H. Crosby thirty-five hundred dollars, value received, with interest at 6 per cent. per annum.

(Signed) THOS. M. PLOWMAN.
G. W. BUNKER.

Secured by deed of trust.

(Endorsement:)

W. H. Crosby, without recourse.

Dec. 21, '68, Cr. by cash $1,000
Jany. 5, '70, " " " 750

Exhibit G. W. S., No. 2.

No. .] WASHINGTON, D. C., *April* 6, 1867.

$1,250. Twelve months after date we promise to pay to the
139 order of A. T. C. Dodge twelve hundred and fifty dollars, value received, with interest at 6 per cent. per annum.

(Signed) G. W. BUNKER.
WM. H. CROSBY.

Secured by deed of trust.

(Endorsement:) A. T. C. Dodge.

Rec'd, April 19, 1870, on the within note, and a receipt taken, afterwards surrendered, and this endorsement made by Mr. Thos. M. Plowman, for G. W. Bunker & W. H. Crosby, for the sum of five hundred and fifty dollars, ($550.)

Exhibit G. W. S., No. 3.

No. .] WASHINGTON, D. C., *May* 2, 1871.

$2,735.10. Fifty days after date I promise to pay to the order of the Freedmen's Savings and Trust Co., twenty-seven hundred and thirty-five $\frac{10}{100}$ dollars, at the banking-house of the Freedmen's Savings and Trust Co., value received, with interest at ten per cent. per annum.

(Signed) JOHN SPICER.

140 *Exhibit G. W. S., No. 4.*

WASHINGTON, *March 10th*, 1870.

Col. D. L. EATON, *Actuary, &c.:*

DEAR SIR: We desire to make application for a loan on a deed of trust overdue; the original amount was $7,000, which has all been paid with the exception of $1,750, which we wish to have carried for sixty days. The said deed of trust is on the lease, having seven years yet to run, good will, stock, fixtures, and furniture, of whatever description, found in the St. James Hotel, cor. 6th str. and Penn. av. Also policy of insurance on same for $7,000, transferred.

All of the papers have been passed by W. H. Ward, and his certificate will be furnished.

We desire the money to-morrow, Friday, March 11, 1870, provided everything is satisfactory.

Very respt.,

G. W. BUNKER & CO.
THOMAS M. PLOWMAN.

THURSDAY, 2 p. m.

DEAR H.: What do you say to this? Please consider.

D. L. E.

141 In the supreme court of the District of Columbia.

WHITE ET AL. }
vs. } 2779. Equity.
BEALL ET AL. }

At an examination held in this cause before me, an examiner in chancery, commencing August 22nd, 1873, the following witnesses were examined on behalf of the defendants Beall et al., viz: Benjamin Beall, William H. Crosby, Amasa T. C. Dodge, Thomas W. Soran, George W. Stickney, Benjamin G. Lovejoy, 6 depositions for defendants Beall et al. January 10, 1874.

JNO. CRUIKSHANK,
Examiner in Chancery.

142 AUG. 22, '73.

BENJAMIN BEALL, of lawful age, a resident of Washington, D. C., one of the defendants, being sworn, deposeth and saith:

I have resided here about 47 years. I am in the retail grocery business. It is now carried on in the building called the St. James Hotel. In 1867, I owned one-half of it, and the representatives of B. F. Middleton's heirs owned the other half. We built the hotel together. We leased the hotel first to G. W. Bunker and Wm. H. Crosby.

(Lease here shown to witness, G. W. B., No. 1.)

It was only a few months before Crosby drew out and took in Plowman; I don't know exactly the time, if I ever knew it. There was some indebtedness to Beall and Baker in the grocery business at the time Crosby drew out and Plowman went in, but I think the rents were about paid to that time.

143 Q. Had you any knowledge of this change of partnership in the substitution of Plowman for Crosby before or at the time it was done?

A. No.

Q. Do you know whether the consent of either of your co-lessors was obtained to this substitution before or at the time of the transaction?

A. I do not know. The co-lessors were never consulted at all. I acted as their agent. I had entire control of the house. They always acquiesced in what I did.

Q. Do you know John Spicer, who subsequently had possession of the hotel in question? If so, when and how did you make his acquaintance?

A. Yes; I think Spicer was introduced by Mr. Bunker to me in the store a few days after Spicer got possession of the hotel.

Q. Who gave him possession of the hotel; did you?

A. I did not. I presume Bunker and Plowman did.

144 Q. When did you first hear of the transfer to Spicer?

A. The first I knew was, I think, that Mr. Spicer came in himself before I was introduced to him and said that he proposed to buy them out, or words to that amount. Mr. Spicer, I think, asked me if I would acknowledge him as a tenant and give him the benefit of the extension of the lease, which I peremptorily refused to do.

Q. Was anything else said at that conversation?

A. I don't know that there was at that particular time; anything of importance at any rate.

Q. Did you have any conversation with Bunker and Plowman in regard to the transfer to Spicer?

A. Not a word.

Q. Did you have any correspondence with Bunker and Plowman, or either of them, in relation to this transfer?

A. I wrote to them on one or two occasions, or more *pre*haps.

Q. Have you copies of any of those letters with you at present?

145 (Objected to because original is not produced.)

A. I have a copy of one in my letter-book, which I now produce.

Q. Did you send the original to Bunker and Plowman?

A. I did.

Q. What is the date of that letter?

A. April 28, 1871, I think. The copy is somewhat blurred.

(Copy from letter-book here filed, marked "Exhibit B. B., No. 1.")

Q. Did you or your co-lessors, to your knowledge, consent, in writing or otherwise, to the transfer of the lease and hotel property by Bunker & Co. to Spicer?

A. Not at all.

Q. After Spicer went into possession, did you or the co-lessors recognize him as tenant of the hotel?

A. Not at all, but always refused to do so.

Q. Did you receive any rents from him?

A. I received some rents from him, and gave him a receipt in

146 the name of Plowman and Bunker.

Q. When this transfer was made to Spicer by Bunker & Co., what was their indebtedness to *to* you and to your firm?

A. For the whole house, they were indebted $4,491\frac{34}{100}$ rent; and to Beall & Baker, for groceries, about $10,378\frac{13}{100}$, for which they held two deeds of trust.

Q. Are they still indebted to you that amount?

A. O, yes. The amounts I have given in are without interest, I think. I am not certain.

(Exhibit , No. , here shown to witness.)

Q. This is a copy of an application for license to keep a hotel in square B, fronting on Pa. avenue and Sixth street, and purporting to be signed by you. What do you know about signing such a paper?

A. I have no recollection about it. I suppose I signed for everybody who asked me in the neighborhood. I suppose I signed the paper of which that is a copy. I am sure I never read it. I never read
147 any of them at all.

Q. If the original of this or any other paper licensing Mr. Spicer at that time to carry on St. James Hotel had been presented to you and you knew it was for that purpose, would you have signed it, or would you not?

(Objected to as irrelevant and incompetent.)

A. Certainly not.

Q. If you did sign the original of which this is a copy, did you read it over before signing it and know its contents?

(Objected to as immaterial, incompetent, and an attempt to explain a written instrument which is in plain terms.)

A. I don't recollect anything about it.

Q. Did Bunker & Plowman, or either of them, ever make an application to you for a renewal of their lease?

A. They never did.

Cross-examined:

I was 64 in March last.

Q. Did not Mr. Spicer and Bunker and Plowman frequently
148 consult with you before the sale to Spicer of the hotel-fixtures and lease?

A. Never once that I know of.

Q. Would you now remember it if they had done so?

A. I think I would.

Q. Did you make any investigation, before the transfer to Spicer, touching his financial ability and capacity to carry on the hotel?

A. In the first place, I don't know when the transfer was made, and, in the second place, I never made any investigation beyond asking who he was and where he was from, when I first heard of him.

Q. Did not Spicer call upon you some time before he took possession of the house and ask you for a statement of the indebtedness from Bunker & Co. to you and to Beall and Baker, and did you not give him a statement thereof?

A. In the first place, I don't know when he took possession, and, in the next place, I don't remember his calling for a statement.
149 If he did, we should have given it to him, of course, or to any one else.

Q. Did you have any consultations about this proposed sale to Spicer, with Plowman or any other person, at any time before the sale?

A. No; none at all.

Q. Did you have no knowledge that negotiations were going on be-

tween Bunker & Co. and Spicer with a view of the transfer of the hotel property to Spicer?

A. I may have heard it, but not from any one of the parties to it.

Q. From whom did you hear it?

A. I don't know.

Q. How or from whom did you first learn that Bunker & Co. had sold out to Spicer?

A. I think it was from Spicer himself; don't recollect exactly. It has been so long.

Q. Did you write the letter of which you have testified as soon as you heard of the transfer?

150 A. I wrote the letter from having seen it in the newspapers, but I may have heard it a day or two before; don't recollect about that.

Q. Were you not anxious to get rid of Bunker & Co., and did you not so express yourself to them and to Spicer, before Spicer got possession of the property?

A. Not at all. I did not so express myself to them. I was anxious to get rid of Bunker and Plowman, but not to get a worse man in their place, though.

Q. To whom and how did you send the letter of April 28, 1871, of which you testify?

A. John W. Brashears, who was a clerk of ours, took it to Bunker and Plowman.

Q. How do you know that he did?

A. Because he said he did, and he was a young man of veracity.

(Answer objected to as incompetent evidence.)

Q. Where is this man now?

A. He is sick at his father's, in Prince George's County, Md.

151 Q. Who are the heirs of Benjamin F. Middleton?

A. Alpheus Middleton, Marian Hyatt, Helen Houston, and Jesse Middleton.

Q. When did Middleton die?

A. About February, 1862. He died at my house. We married sisters.

BENJ. BEALL.

152 *Exhibit B. B., No. 1.*

WASHINGTON, *April 28th*, 1871.

Messrs. GEO. W. BUNKER & CO.,
St. James Hotel, Washington, D. C.:

GENTS.: We are again constrained to notify you that on to-morrow morning we shall take possession of furniture and fixtures of the St. James Hotel, by the trustees, as also by the marshal, who is directed to attach for rent. Being quite tired out by promises and propositions, the officers will act promptly to-morrow morning. It appears in a morning paper that the hotel has changed hands. We want it understood that any such change is not authorized by us, and of course we do not sanction it.

Respectfully,

MIDDLETON & BEALL.
And for BEALL & BAKER,
BENJ. BEALL.

True copy from letter-book.

JNO. CRUIKSHANK,
Examiner Chancery.

153 In the supreme court of the District of Columbia.

WHITE ET AL.
vs.
BEALL ET AL.
} Equity 2779. Dec. 20, '73.

WILLIAM H. CROSBY, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants Beall et al., deposeth and saith:

I was one of the lessees of the Bunker Hotel, under the lease of March 30, 1867. I leased it, with George W. Bunker, from Benjamin Beall and the executors of Benjamin F. Middleton, deceased. Mr. Thomas M. Plowman was with us at the commencement, but it did not appear on the papers. I subsequently sold out to Plowman and Bunker, at $7,000. The price was to be paid to me in two notes, of $3,500 each, at six and twelve months. The date was the 2d October, 1868, I think, and they were given me by Bunker and Plowman. I executed an assign-
154 ment of the lease and my interest in the premises to Bunker and Plowman.

(Witness here shown paper marked "Exhibit G. W. B., No. 2.")

This is the paper. On my executing that paper, they delivered to me the two notes referred to. They further *they further* executed a deed of trust to Samuel L. Phillips to secure the payment of the notes. The first of those notes was paid at maturity. The second note was not paid. I spoke to Mr. Phillips about it, and he said he thought the matter had better rest a little while. He did not say how long. I went to see them with Mr. Phillips about the 16th October, I think, but we did not see them. This unpaid note was subsequently paid about October 19, 1869. I am not positive about the dates, but it was in that vicinity. The whole of the second note was paid to me at one time. It was given then to Bunker and Plowman. I never sold that note, that I know of, to Mr. Soran or any one else. Mr. Phillips fixed the papers without re-
155 course, and that settled the *the* matter with me. I mean that he wrote on the note "without recourse." I did not know Mr. Soran. I do not know him now. I never bargained with any one for the sale of this note. I never authorized Mr. Phillips to sell the note, instead of collecting it.

Cross-examined by Mr. Totten, for the Freedmen's Saving and Trust Company:

I got my money from Mr. Phillips, all of it. I mean Samuel L. Phillips, the lawyer, on 4½ street. That was for the last note, you understand. The first note was paid in bank. Mr. Phillips was acting as my attorney in the matter. I did not authorize him to dispose of the matter in any manner so that I got my money. I merely made him my agent, my attorney, to collect the note for me; I gave him the note. This was in October, 1869, the same day the money was collected; I think it was the 19th October, 1869. I went to the bank and got the note; I
156 was in Mr. Phillips' office when he gave me the money. I think Mr. Plowman was there, Mr. Bunker, and I think Mr. Samuel Cross was there, and some other parties I did not know. I am not positive to whom Mr. Phillips delivered the note after I endorsed it without recourse. I could not say whether he gave it to Mr. Cross or not. I do not know who furnished the money to take up this note. Heard nothing said about it at the time the money was paid. My impression was that they got it from a party I did not know.

(Impressions of the witness objected to.)

Q. Didn't Mr. Phillips, as your attorney, have full power either to collect or transfer the note, or to dispose of it in any way to bring you the money?

A. I don't know that I could tell; I am not posted enough in the law to know how far his authority extended.

Q. Did you care how he disposed of the note to raise you your money?

(Objected to.)

157 A. No; I don't know that I did.

Q. Didn't Bunker and Plowman tell you that they did not have the money to meet that note about that time?

(Objected to, because the declaration of Bunker and Plowman are not admissable.)

A. No, sir; they did not tell me about that time.

Q. Did they tell you at any other time?

A. Before that there was some conversation about it, but I hardly remember what it was.

Q. Didn't you know that Bunker & Plowman did not have the money, and would have to raise it?

A. I did not know how their affairs were.

Q. Didn't you know at the time you got your money in Phillips' office that Bunker and Plowman had procured some one to furnish the money you got, and to take up and carry the note?

Answer. I knew nothing positively about that. As I said before, I presumed got some one.

Q. Then you understood that some one else was advancing the money?

158 A. I did.

Q. Then you supposed that the note was to be handed over by Mr. Phillips to the person who advanced the money?

(Objected to because the witness has not said that he had any such supposition.)

A. I had a supposition to that effect, but was not positive. I left it all to Mr. Phillips.

Q. You were perfectly willing, were you not, that Mr. Phillips should transfer the note to the person advancing this money?

(Objected to because the witness has already stated that he did not authorize Mr. Phillips to dispose of the note, or to do anything else but to collect it.)

A. I wanted the matter settled with me. I didn't know anything more about it.

(Question repeated.)

(Objection renewed.)

A. I don't know that I had any objection, so that it was settled with me.

Q. You have no interest in the controversy in this case, have you?

159 A. No' any.

Q. Was the first note paid at maturity?

A. It was.

Q. Do you know by whom?

A. I do not. It was paid at the Bank of the Metropolis.

Re-examined:

I can't say that Mr. Phillips ever asked me to give him authority to transfer my property in this note to anybody.

Q. Did you ever in fact give him authority to transfer your property in this note?

A. I am not positive on that point.

Q. Have you any recollection of authorizing Mr. Phillips, instead of collecting the note, to sell it?

A. I have not.

W. H. CROSBY.

AMASA T. C. DODGE, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of the defendants Beall et al., deposeth and saith—

160 I am the party secured by a deed of trust to Orestes B. Dodge, dated April 6th, 1867, and now shown me.

(Witness here shown Exhibit A, filed with answer of The Freedmen's Savings and Trust Company.)

The first of the two notes mentioned in the deed was paid. In April, 1870, $550 was paid on the second note. I held the note at that time. I subsequently sold it to Samuel A. Peugh. These two notes were given for the furniture of the Clarendon Hotel, sold by me to Bunker & Crosby. That was not the whole purchase-money for the furniture. There was $1,000 more, besides the two notes. The furniture covered by the deed of trust was regularly listed. There is a copy of the list annexed to the deed of trust. I recollect when the sale of the furniture took place. It was a year ago last April. My son was at the time in Redwing, Minnesota, about three years before April, 1872, living and

161 doing business as a merchant there. He was not here at the time the property was advertised for sale. I do not know who advertised the furniture for sale in the name of my son. I could have identified the property covered by that deed immediately before the sale. I could now as to some of the articles, I think. I was there the day it was sold, and noticed a good many of my articles there being sold. I don't know how many of the articles had disappeared, or how many remained on the premises on the day of sale. I didn't go all through the house. I never heard of my son having authorized the Freedmen's Bank to sell under this deed of trust, or anybody else. I am in frequent correspondence with my son, and have been all along. He occasionally visits me here. I sent him a copy of the advertisement. He said he knew nothing about the advertisement.

AMASA T. C. DODGE.

162 WHITE ET AL. v. BEALL ET AL. } 2779. Eq. doc. 11. Jan. 2d, 1874.

THOMAS W. SORAN, of lawful age, a resident of Washington, D. C., a witness produced and sworn on behalf of defendants Beall et al., deposeth and saith:

I was applied to by Samuel Cross, about October, 1869, for a loan of money. He told me he wanted it for Plowman & Bunker. I agreed to let him have the money; I subsequently gave a check for the money. When I gave the check I believe I was in the office of Samuel L. Phillips. I cannot say positively to whom I handed it. There were several in the office, and I could not say positively in whose hands I gave it.

(Witness here shown check marked "Exhibit T. W. S., No. 1.")

163 *Exhibit T. W. S., No. 1.*

[Internal-revenue 2-cents stamp.]

No. .] WASHINGTON, D. C., *Oct. 18th*, 1869.

Riggs & Co.: order,

Pay to T. W. Soran, or bearer, thirty-three hundred & forty-two $\frac{50}{100}$ dollars.

($3,342 $\frac{50}{100}$.)

MARY L. STEPHENS.

This is the check that I gave.

At the time I gave the check, I did not know William H. Crosby; I may have been introduced to him in Mr. Phillips' office, or possibly elsewhere, but I did not know him at all until that introduction. I never had any treaty with Mr. Crosby for the purchase of any commercial paper.

(Witness here shown original note, copy of which is marked "Exhibit .")

Mr. Crosby never sold me that note. I never had any treaty with Mr. Phillips for the purchase of this note.

He never undertook to sell it to me. I had the transaction for
164 the money I advanced with Mr. Samuel Cross, who represented Bunker and Plowman. Plowman seemed to be the person who managed the business. I never saw Bunker in the transaction.

(Witness again shown the original note.)

These credits are in my handwriting:

Dec. 21, '68, Cr., by cash	$1,000 00
Jany. 5, '70, " " "	750 00

I have before me the "stub" of the check I gave on this occasion; it is in these words:

"OCTOBER, 1869.

"T. W. Soran, (Bunker & Co.,) $3,342.5

The entry on the stub was made at the time I drew up the check. I then had it signed by my sister, Mary L. Stevens, who had the money for my sister at that time. I have an entry of this transaction in my book "Bills receivable," which is before me.

(Witness requested to look at book.)

165 The money loaned to be paid back, one-half in 60 days from October 18, 1869, and the balance in four months from October 18, 1869. This book further shows what payments were made. Two payments were made, the first December 21, 1868, according to the book, the amount being $1,000; the second payment was made Janu'ry 5, 1870, $750. The date of the first payment is a clerical mistake of my own; it should be December 21, 1869. The balance of the amount advanced was, I believe, subsequently paid to me. It is marked "settled" on the book here. I received it. I did not subsequently sell this note to anybody. (Witness shown original note.) I did not subsequently authorize Bunker & Plowman, or either of them, to sell this note for me. They were to raise the money somewhere to take up this note. I didn't know where. I guess I did too. I had nothing to do with the transaction for raising the money. I at no time sold this note, or author-

166 ized Bunker and Plowman, or either of them, to do it for me. I did not know Colonel Eaton, the cashier or actuary of the Freedmen's Bank, at that time.

Cross-examined:

In this transaction I acted as the agent of my sister, Mrs. Stevens, who furnished the money. I knew at the time that I bought this note that it was overdue. The understanding was that I was to take this note and carry it for Bunker & Plowman.

(Understanding objected to.)

Bunker and Plowman did not advance any money at that time on this note, to my knowledge. I received this note at the time I delivered the check in Phillips' office. I must have received the deed of trust at the same time.

My impression is that there were several parties interested in the office. I am not positive who gave me the papers. Mr. Phillips seemed to be acting and interested in the matter, but I am not positive
167 whether he gave me the papers or not. I am not positive whether Mr. Crosby was there at the time or not.

Q. Wasn't it understood that you were to take and carry this note for Bunker & Plowman?

(Understanding objected to; facts must be stated.)

A. I can't state positively whether it was understood by all those in the room.

Q. What do you think about it?

A. I think it was understood by Mr. Plowman that I was to take the note and carry it.

Q. What did Mr. Phillips understand about it?

(Understanding objected to; the facts should be stated.)

A. I don't know what Mr. Phillips understood about it.

I can't say positively whether this $1,750 was paid to me. It
168 may have been paid to Cross by Plowman and handed to me, but I received it. I received the money during the time I owned the note, as agent. When this note was finally taken up from my hands, I got the money either from Plowman or Cross, because they were the only two men I knew in the matter. I recollect now it was from Plowman I got the money. Plowman was, at that time, in the Freedmen's Bank on 7th street.

Q. Didn't you get the money from Mr. Stickney or some officer of the Freedmen's Bank?

A. It is possible that I did.

Q. Did you deliver the deed of trust and this note to the Freedmen's Bank at the time you received the money?

A. I delivered them to the party I received the money from. I ran after Plowman a good deal before I got the matter settled. My impression was that the Freedmen's Bank took up the note; I was not an officer of the bank, to look at the books to see who took the
169 note up.

Q. You took this note and the deed of trust to the Freedmen's Bank in order to give them to the bank, when you got your money, didn't you?

A. I did, sir.

Q. Did you know Eaton or Stickney at the time?

A. I can't say positively whether I knew either of them at the time.

Q. Didn't Plowman tell you that he had procured the bank to advance you your money and to carry the note?

(Declarations of Plowman objected to.)

A. Yes, sir; I believe he did.

Q. What do you say now as to whether Plowman actually handed you the money in the Freedmen's Bank?

A. After more reflection, I believe the money was handed to me by some one in the bank—one of the officers of the bank; I think so.

170 Redirect:

I am clear in my recollection. There is a cloud in my mind as to who did hand me the money. I have no recollection of getting a check from Plowman for the money. I have no recollection of having had a conversation with Crosby about the matter, when I met him at Phillips' office; I did not know Crosby at all. In the transaction I looked to T. M. Plowman and Bunker for repayment of the money loaned.

T. W. SORAN.

171 WHITE ET AL. *vs.* BEALL ET AL. } January 10, 1874.

GEORGE W. STICKNEY, of lawful age, a resident of Washington, D. C., being recalled, deposeth and saith.

By counsel for Beall et al.:

The books of this bank do not show that anything went to the credit of Plowman. There was no account opened with Plowman. This is the cash blotter. It shows a loan to Plowman on March 12th, 1870, of $1,750. The loan is debited to loan acct. of $1,750 in the name of Thomas M. Plowman. The note was a four-months note, given by Thomas M. Plowman and secured by note of Bunker & Plowman in favor of W. A. Crosby, a copy of which is marked "Exhibit G. W. S.," No. , and by deed of trust to Sam'l L. Phillips.

172 The note of Plowman was a stock note. I annex a copy of the form of the note. Before this note matured we opened a register of loans and collaterals.

Exhibit J. C. No.

$. No. . Folio .

WASHINGTON, D. C., , 1870.

after date promise to pay to the order of at the banking-house of the Freedmen's Savings and Trust Co., dollars, without defalcation, for value received, with interest at the rate of per cent. per annum, payable semi-annually. As collateral security deposit with , and hereby authorize to sell at public or private sale, without notice, upon the non-payment of this obligation at maturity, the following described .

Address:

173 The note was renewed as shown by this new book on July 15, 1870. The entries in the new book are as follows:

Under the head of "to whom loaned," "Geo. W. Bunker & Co." Under the head of "Real estate description," the following: "Deed of trust, furniture and fixtures of Bunker's hotel, cor. of 6th st. and Penn. ave. Sam'l L. Phillips, trus. Note secured by the same for $3,500.

See coll. book as collateral security." "Application" under "time of loan," "2 months, July 15." Under "rate of interest" "10 per ct." Date of note, July 15. Under "When due," "1870, Sept. 15, 18." Under "Amount loan," "1,750." Under head of "Remarks," the following:

"Extended to No. 17, '70.
" " " Feb'y 21, 24, '71.
" " " Mch. 24, '71.
Protested.
" " " Apl. 20, 23, 1871.
"Paid May 2, '71. (Loan 413. See page 237.)

174 "Inst. paid to Nov. 23, '70.
" " " Feb'y 24, '71.

Turning to page 237 of the book, I find the following entries:

No. 413. "To whom loaned," "Jno. Spicer."

Real estate description: "Note of G. W. Bunker and W. H. Crosby to A. T. C. Dodge, secured by deed of trust, (on file,) dated Apr. 6, '67, one year for $1,250. Note Thos. M. Plowman and G. W. Bunker to W. H. Crosby, secured by deed of trust, (on file,) for $3,500, one year from Oct. 2, '68. Insurance policy. Time of loan: 50 days, May 2d. When due, 1871, July 21, 24. Rate of interest 10 p. c. Amount loan 2,735.10. Date of note May 2."

Referring to the loan day-book opened Feb. 25, 1871, I find the following entries:

175 May 2, 1871. Cash debited by payment of loan, G. W. Bunker & Co., $1,750, and cash credited by loan to John Spicer $2,735.10.

These entries show that the G. W. Bunker & Co. note was paid by the new note given by Jno. Spicer, which new note is filed with depositions and marked "Exhibit G. W. S. No. 3;" the difference, $985.10, was paid to Samuel Peugh, being amount due on the Dodge note, which is Exhibit G. W. S. No. 2. The books do not show the payment to Peugh, but I recollect the fact.

Cross-examined by Mr. Totten:

The note of Peugh was bought by Spicer. He gave his note to us for $2,735.10. We got that note from S. A. Peugh, (marked "Exhibit G. W. S. No. 2.") We paid Mr. Peugh $985.10 May 2, 1871. Mr. S. A. Peugh delivered it to me in person. He didn't give it up until he got the money. Plowman was there at the time. It was agreed by Plowman that we should hold the whole collateral as security for the Spicer note.

176 Plowman said they had sold out to Spicer. The collateral I refer to is the note marked "Exhibit G. W. S. No. 1," made by Bunker and Plowman in favor of Crosby.

Redirect:

Never had any negotiations with Peugh for the purchase of the Dodge note. First saw Mr. Peugh when he came with the note, and I gave him the money for it. Colonel Eaton made all the transactions; I simply paid the money.

Recross-examined:

Q. If you paid the money to Peugh and took from him, you had a negotiation with him, hadn't you?

A. I had a negotiation with him, so far as the payment of the money was concerned.

G. W. STICKNEY.

177 Benjamin G. Lovejoy, of lawful age, a resident of Washington, D. C., produced and sworn on behalf of the defendants, Beall & Co., being sworn, deposeth and saith:

I was counsel in the case of Beall and Middleton and Benjamin Beall, at law, in the supreme court of the District of Columbia, Nos. 8849, 8850, 9166, and 9177, vs. Bunker & Plowman, two of the cases being in the name of Beall and Middleton and two in the name of Benjamin Beall.

These suits were all brought for rent due the plaintiffs on account of the premises at the corner of Pennsylvania ave. and 6th street, and the adjoining property. Judgments of condemnation were rendered in the four cases, and executions issued. The marshal took possession of the personal property under the executions. After the marshal took possession, the trustees came down to the hotel. I was present. Either one of the regular bailif's or a man named Gittings was in pos-
178 session of the property, holding it for the marshal. I mean by the property the personal property on the premises leased or rented; the property which had been attached. Spicer was in the occupation of the hotel. When the trustees came down to the hotel they had some conversation with Mr. Spicer, and entered into an agreement with him respecting the possession and sale of the personal property, which I witnessed, and which is now shown me, (marked "Exhibit B. J. L., No. 1.") After the date of this paper, John Spicer applied to the court for an injunction; this case is No. 2674, eq. doc. 11. The court refused an injunction. After that the sale took place. The marshal continued in possession down to the sale of the personal property and its delivery *of* the purchasers. The sale was made by Phillips and White, first under the judgments and then under the deeds of trust held by them. That was my understanding of the arrangement.
179 The trustees made the sale to save double expenses. I refer to the marshal's expenses in addition to those of the trustees.

Until Jesse Middleton came of age the suits were brought in the name of Benjamin Beall and the executors of the will of Jesse Middleton's father. After Jesse Middleton came of age, (Alpheus was already of age,) the suits were brought in the name of Benj. Beall and Alpheus & Jesse Middleton, who were devisees of their father. The property was owned, one piece by Benjamin Beall exclusively, and the other piece by Benj. Beall and the executors of Benjamin F. Middleton.

BENJ. G. LOVEJOY.

180 This agreement, made this 12th day of February, 1872, between John Spicer, of the one part, and Elias E. White and Samuel L. Phillips, of the other part.

Whereas the said White and Phillips have each severally seized and taken possession of the goods and chattels respectively mentioned in the deeds of trust to said White and Phillips, namely, recorded liber No. 608, fol. 18, one of the land records for Washington County, and in liber No. 7, folio 197, one of the chattel records for Washington County, D. C.:

It is, this 12th day of February, 1872, agreed by the said Spicer that the said goods & chattels may remain in the St. James Hotel, in the possession of said White and Phillips, free of charge to the said White and Phillips, until the day of sale and delivery to the purchasers there*to*; and further, that the said sale may take place in said hotel. It
181 is also agreed that the said trustees may sell the goods and chattels in the said hotel for the payment of the rent due to the land-

lord of said hotel and costs of attachment-suits instead of the marshal, under the advertisement or advertisements of said trustees, and from the first proceeds of said sale the trustees shall pay to the said marshal all the rent that may then be due and unpaid of said hotel, and the balance to be paid in liquidation of said two deeds of trust; and for this purpose the said trustees may sell all and every the goods and chattels and personal property contained in said hotel included or mentioned in said deeds of trust, or either of them, or in either of the four schedules of the marshal. It is also agreed that the said trustees may sell under one advertisement, and at the same time.

JOHN SPICER.

Witness:
BENJ. LOVEJOY.

182 In the supreme court, District of Columbia.

WHITE ET AL. vs. BEALL ET AL. } Equity 2779.

The within deposition of Thomas M. Plowman for Freedmen's Savings & Trust Co., written down by me from his statement, was read by me to him, and signed by him in my presence.

JNO. CRUIKSHANK,
Examiner in Chancery.

DECEMBER 31, 1873.

183 DEC. 31, '73.

THOMAS M. PLOWMAN, recalled on behalf of the Freedman's Savings and Trust Company.

Q. Did you see a letter from Mr. Beall or Mr. Baker or both of them, purporting to be written about the time Spicer took posesssion of the hotel, stating to you or Bunker & Co., that the transfer to Spicer was without their consent or knowledge?

(Objected to because leading and otherwise inadmissible.)

A. I most emphatically say no.

Q. Were you present in the office of Samuel L. Phillips, about the 19th October, 1869, in relation to the note made by Bunker & Co. for $3,500, to the order of W. H. Crosby?

A. I was present when a certain transaction took place in regard to a certain note.

(Witness here shown original of G. W. S. No. 1.)

Q. Is that the note?

A. It is.

Q. State the transaction and what was done at that time.

184 A. Mr. Soran brought the money down, it having been previously arranged with him, by Mr. Cross. Mr. Soran paid the money to take up the balance of this note, in Mr. Phillips' hands. Mr. Crosby or some other person put on to it "without recourse" to Mr. Crosby. Mr. Soran took the note and papers and left; Mr. Crosby and I, I think, came down the street together. That is the end of that transaction.

(Answer objected to so far as it relates to what passed between Crosby and Soran.)

Q. Who delivered the note and papers to Soran?

A. Mr. Phillips received the money and gave the money to Crosby and handed the papers to Soran.

Q. Did Crosby know that Soran furnished the money, and Bunker and Plowman didn't?

(The examiner is desired to instruct the witness to confine himself to his personal knowledge of what Crosby knew.)

185 A. Mr. Crosby knew just as well as I did and knew as much about the transaction as I did. I speak that from my own knowledge.

Cross-examined:

Q. At the time of this transaction, had any money been paid on the note?

A. A portion of it had been paid. It appears upon the back. I think it was in two instalments.

Q. Then the transaction to which you refer did not take place until the endorsements had been made on the notes, did it?

A. The transaction was after that, and to cover the balance due. Those amounts had been previously paid.

Q. Can you recollect when the transaction took place to which you have referred?

A. I cannot without referring to something to refresh my memory.

Q. How long had the note been overdue to the best of your recollection?

A. Some time. I don't know exactly how long.

Q. Had any payment been made before it came due?

186 A. I think not. There may have been.

Q. Have you any recollection of a payment having been made on this note, before it became due?

A. I think Mr. Crosby got some money from the firm on that note, amounting in all probably to the amount endorsed on the note. We made desperate efforts to get Mr. Crosby to extend the time on that note. I think Mr. Crosby got some money—$300 or $400 or $500—on that note and gave a memorandum for it.

Q. Can you say when Crosby got $300 or $400 or $500?

A. I cannot, indeed.

Q. Have you any recollection of any payment being made before the note became due?

A. I have already said I think he got $300, or $400, or $500 before the note became due. I am not positive.

Q. Did your consultation with Stickney lead you to correct

187 any of the testimony which you had given?

A. No, sir; I only asked him one question. I asked him who was with me when he paid that money. He described the gentleman, and satisfied me it was Mr. Soran. I became satisfied then that Mr. Soran was present with me.

Q. Have you had no conversation with Mr. Stickney since in relation to this case?

A. I have not.

Q. When did you have the conversation to which you refer with Mr. Soran?

A. I met him on the street, sometime after having given my testimony. I think it was within a few days. I kept the thing in my mind, so that I could speak to him about it and refresh my memory. It may have *have* been a week or ten days.

Q. What did he tell you?

A. He said he had forgotten, but that he would try and refresh

188 his memory, but that his impresion was that Mr. Stickney paid

him the money with his own hands. That was the substance of what passed between us.

Q. Have you had any other consultations on this subject?

A. I have not.

Q. Did you pay Soran anything for the money he advanced to pay the balance of the note?

A. I paid him something on two occasions. How much I don't remember. I think it was $200 or $300 over the face of the paper. Whether he got it, or his sister who furnished the money, I don't know.

Q. Did you pay him that on each occasion?

A. I couldn't say.

Q. What was that money paid for?

A. I think it is likely it was paid to carry it, to hold off from prosecuting, to keep the parties from pushing, or something. That is my impression. I will not be positive. It may have been for interest overdue. Will not be positive.

189 Q. But what I mean to ask is whether at or about the time of the advance of the money, do you recollect any money being paid after the maturity of the note?

A. Nothing but what was endorsed on the note.

Q. To the bes' of your recollection how much money was paid to Crosby after the maturity of the note?

A. I think the first instalment paid him afterwards was to make up an even $1,000, including what he already had.

(Witness here shown G. W. S., No. 1.)

Q. In whose handwriting are thes' credits endorsed?

A. They were made in Mr. Phillips' office. I am not positive by whom they were made. I believe they were made in his office—I am not certain. All I know is that the money was paid.

Q. What amount of money was advanced by Soran?

A. The amount due on the note—I cannot tell what it was.

190 Q. Who employed Cross to negotiate with him, Soran?

A. I don't know who employed Mr. Cross to negotiate with Mr. Soran, but I employed Mr. Cross to get the money for me.

Q. And the result of this employment was that Soran paid the money to Crosby. Am I right?

A. He paid the money to Mr. Phillips, his representative in the case.

Q. What did you pay Cross for the above agency?

A. I paid him for his services. I don't remember the amount.

Q. Are you sure you employed and paid Mr. Cross?

A. I am sure that I employed and paid Mr. Cross—Cross and Walsh were the firm, I believe?

Q. And you employed him to get the money for you or Bunker & Co.?

A. Yes, sir.

Q. When did you pay back Soran?

191 A. I have never paid Mr. Soran, except through a negotiation with the Freedmen's Bank.

Q. I am not asking you how you paid Mr. Soran. My question is when you paid that money back?

A. I couldn't tell you exactly when, without referring to the papers.

Q. Did you ever pay Mr. Soran until you obtained a discount on that note from the Freedmen's Bank?

A. I did not.

Q. How did you then pay him?

A. Mr. Soran, by an appointment with me, previously arranged with

Col. Eaton, went up to the bank on 7th street, where the old book was, and Mr. Stickney, in whose hands Col. Eaton had put the business, received the papers and paid Mr. Soran the money.

Q. Was the discount by the bank given to Soran, or to you, or Bunker & Co.?

A. My recollection is this: that a note was filled, payable at some time, I don't know when, it might have been on demand, for the
192 whole amount loaned by Mr. Stickney on the papers—probably a due-bill signed by Bunker & Co., and endorsed by me individually—it may have been.

Q. Soran's name did not appear on the papers anywhere, did it?

A. No, sir; nowhere.

Q. Did not the money go to the credit of Bunker & Co., and was it not checked out by them? I mean the proceeds of the discount.

A. I told you already that the proceeds of this transaction were paid to Soran; consequently there could be nothing to the credit of Bunker & Co.

Q. Do you mean to assert that the proceeds of this discount were not credited to Bunker & Co. or yourself, and were not checked out by them or you?

A. I do not know how the bank kept their accounts or what is customary. This I say, that Bunker & Co. never received any of the proceeds of that transaction, directly or indirectly, and never drew
193 a check on the Freedmen's Bank except to get the note out of the hands of parties pushed on by Beall & Co. to drive us to the wall. That is my answer to that. What I mean by that is that the only benefit we derived from the transaction was to pay that note in the hands of those parties. The Freedmen's Bank holds the papers to-day. At least I understand they did.

Q. Who negotiated the transaction with the Freedmen's Bank?

A. I did.

Q. Was Soran known at all in that negotiation?

A. He was not, except to go up and get the money. He held the papers.

Q. You spoke just now of never having drawn a check on the Freedmen's Bank, "except to get the note out of the hands of parties pushed on by Beall & Co. to drive us to the wall." Do you refer to Mr. Soran?

A. I did not wish to be so understood. I said that we did not re-
194 ceive any benefit from the transaction except to get the note out of the hands of parties pushed on by Mr. Beall to drive us to the wall—Bunker & Co.

Q. Do you mean to assert that you or Bunker & Co. never drew a check for the proceeds of that discount, or any portion thereof?

A. I have said a while ago that I did not know what the modus operandi of the bank was, nor do I now know; but this I do say, Mr. Soran received the entire proceeds, in cash, of this transaction.

Q. You do not answer my question; I again ask whether you mean to assert that the proceeds of the discount, or any portion, were not checked out by you or Bunker & Co.?

A. I mean to say that not one dollar of that money was paid to Bunker and Co., or was checked out outside of that payment to Soran. The paper which I alluded to just now may have been in the
195 form of a check, when I said a memorandum, due-bill, or something of that kind.

Q. I again ask you whether you mean to deny that the proceeds of that discount, or a portion thereof, were checked out by you or Bunker & Co.?

A. I don't propose to deny anything that is true. I don't know that I can give any answer than the one I have given. I cannot remember exactly what kind of papers Col. Eaton drew at the time, in this transaction. Whatever he did draw I signed, and the entire proceeds went to the party mentioned heretofore, Soran.

(Answer objected to, so far as not responsive.)

Q. Then you do not remember whether you or Bunker & Co. drew a check upon the proceeds or not?

A. No.

196 Q. Was the money paid to you by the bank, or to Soran?

A. The money was paid by Mr. Stickney to Mr. Soran, in his own hands, under the direction of Mr. Eaton, who is, I am sorry to say, dead.

Q. Are you certain that the money was paid directly to Mr. Soran?

A. I saw Mr. Stickney do it.

Q. What do you mean by the following statement in your testimony of August 20 last: "He" (referring to Col. Eaton) "required me to" put the application in writing and gave the "money either to me, for Soran, or to Soran"?

A. Because I wish to be guarded in my answer. At that time I was not certain whether Soran was present or not, from my memory being a little treacherous; since that time I have learned the fact and refreshed memory. Mr. Soran received the money himself.

Q. From whom have you learned that fact, and how have you
197 refreshed your memory?

A. From careful consideration and reflection, and consultation with Mr. Soran and Mr. Stickney.

Q. When did you have your consultation with Mr. Stickney?

A. I think I met him in this office, after I had given my testimony. My mind was pretty clear on the subject at the time, but as there was a little doubt and uncertainty I wished to refresh my memory by consultation, which I did.

Q. Do you mean immediately after you gave your testimony, August 20th, 1873?

A. I cannot say exactly the day. It was in this office at the time I was giving testimony in this case, when Mr. Stickney came in and was to be heard after me.

Q. Was it before Stickney testified?

A. Yes, sir; I didn't hear his testimony at all; I left

by Soran

198 Dec. 31, '73, any money was paid or agreed to be paid to him?

A. I think he was paid then what was coming to him, whatever there was.

Q. Give me your best recollection of what he was paid at that time?

A. I have no recollection about the bonus.

Q. You know, however, there was a bonus; do you not?

A. I know there was something paid; how much I don't know.

Q. Was any bonus paid to the Freedmen's Bank?

A. No, sir.

Q. Who paid the bonus to Soran, as you have above stated?

A. It, in fact, came out of G. W. Bunker & Co.

Redirect:

G. W. Bunker & Co. never kept an account with the Freedmen's Bank.

Recross-examination:

I never put money on deposit in the Freedmen's Bank, but have
199 had a great deal of business with it.

(The testimony having been read to the witness, he explains a portion foregoing testimony as follows:)

I mean to say that G. W. Bunker and Co. never drew one dollar of the proceeds of this note, directly or indirectly, except to be applied to the payment of this loan in the hands of Soran, if such check was drawn. At this time, I have no recollection whether such a check was drawn. If it was it was applied to that payment.

THS. M. PLOWMAN.

200 *Declaration.*

In the supreme court of the District of Columbia, Aug. 29, 1871.

BENJAMIN BEALL, ALPHEUS MIDDLETON, Jesse Middleton, plaintiffs,
vs.
GEORGE W. BUNKER AN' THOMAS PLOWMAN, defendants.
} At law. No. *No.* 8849.

The plaintiffs sue the defendants for the defendants' use, by the plaintiffs' permission, of the house and premises situate at the southeast corner of 6th street west and Pennsylvania avenue in the city of Washington, District of Columbia, formerly known as the Clarendon
201 House, or Hotel; and the plaintiffs claim $925.00, with interest and costs, according to the annexed particulars of demand.

B. J. LOVEJOY,
Plff.'s Atty.

The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

B. J. LOVEJOY,
Plff.'s Atty.

Account.

Mess. Geo. W. Bunker & Thomas Plowman to Benjamin Beall, Alpheus Middleton, Jesse Middleton, *Dr.*

1870. Nov. 1.	To rent of St. James Hotel:			
" " "	One month rent	$333	33⅓	
" Dec. 1.	" " "	333	33⅓	
1871. Jany. 1.	" " "	333	33⅓	
" Feby. 1.	" " "	333	33⅓	
" Mch. 1.	" " "	333	33⅓	
" Apr. 1.	" " "	333	33⅓	
" May 1.	" " "	333	33⅓	
" June 1.	" " "	333	33⅓	
205 " July 1.	" " "	333	33⅓	
" Aug. 1.	" " "	333	33⅓	

Cr. on the same.

1871. Jany. 31.	By cash	$200	00
" " " " "		100	00

"	Feby.	3.	"	"	80 00	
"	"	4.	"	"	61 66	
"	"	28.	"	"	333 33⅓	
"	Mch.	31.	"	"	333 33⅓	
"	Apl.	29.	"	"	333 33⅓	
"	May	21.	"	"	333 33⅓	
"	July	1.	"	"	333 33⅓	
"	Aug.	1.	"	"	300 00	—2,418 33

Bal. due Aug. 1, 1871 ..... 925 00

(Endorsed:) At law. 8849. Benjamin Beall, Alpheus Middleton, Jesse Middleton, *v.* George W. Bunker, Thomas Plowman. Declaration & a/c. Clk. please file, &c. Ben. G. Lovejoy, plffs.' atty. Filed 30 Aug., 1871.

203 *Affidavit.*

In the supreme court of the District of Columbia.

BENJAMIN BEALL, ALPHEUS MIDDLETON, JESSE Middleton, plaintiffs, *vs.* GEORGE W. BUNKER AND THOMAS PLOWMAN, defendants. } At law. No.

Benjamin Beal, one of the plaintiffs in this cause, makes oath that the defendants are the plaintiffs' tenants as set forth in the declaration, and that the money they therein claim to be payable to them by the defendants is for rent of said premises, due and unpaid at the time of filing said declaration, and to secure which the plaintiffs have a tacit lien upon the goods and chattels on the premises.

BENJ. BEALL.

Sworn to and subscribed before me this 29th day of August, A. D. 1871.

SAMUEL C. MILLS, *J. P.* [SEAL.]

(Endorsed:) Filed 30 Aug., 1871.

204 *Summons.*

In the supreme court of the District of Columbia, the 30 day of August, 1871.

BENJAMIN BEALL, ALPHEUS MIDDLETON, & Jesse Middleton, plaintiffs, *v.* GEORGE W. BUNKER & THOMAS PLOWMAN, defendants. } At law. No. 8849.

The President of the United States to the defendants, greeting:

You are hereby commanded to appear in this court, on the first day of its special term, occurring 20 days after service of this writ on you, to

answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness: D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

LOVEJOY.

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

205 (Endorsed:) No. 8849. At law. Benjamin Beall et al. vs. Bunker & Plowman. Issued 30th August, 1871.

I do authorize & depute L. M. Graves to serve this writ.

A. SHARP, *Marshal.*

AUGT. 30TH, '71.

Served copies of the declaration, notice to plead, and this summons, on the defendant Thomas Plowman—not to be found, Bunker—the 2 day of Sept., 1871.

A. SHARP, *Marshal.*

On Bunker, Sept. 28, '71.
S'd on Plowman, Sept. 2d, '71.

GRAVES.

Served copy on Bunker Sept. 28th, '71.

A. SHARP, *Marshal.*

Attachment for rent.

In the supreme court of the District of Columbia, the 30th day of August, 1871.

BENJAMIN BEALL, ALPHEUS MIDDLETON, & Jesse Middleton *vs.* GEORGE W. BUNKER & THOMAS PLOWMAN. } At law. No. 8849.

The President of the United States to the marshal of the District of Columbia, greeting:

206 You are hereby commanded to attach, seize, and take into your custody such of the defendants' goods and chattels as are subject to execution for debt, which shall be found on the premises occupied by him as a tenant of the plaintiff, in this District, to the value of $925.00, the amount of the plaintiff's demand against the defendant for rent, as shown by his affidavit duly filed, according to the act of Congress in such case made and provided.

Witness: D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

LOVEJOY.

(Endorsed:) Issued 30 August, 1871. Rent due, $925.00. Attached as per schedule Augt. 30, 1871. A. Sharp, marshal. Marshal's fee, $32.00. Phillips.

Schedule.

BENJ'N BEALL ET AL.
vs
BUNKER & PLOWMAN. } No. 8849. Atta. for rent. Schedule.

207	In parlor: 1 piano, stool & cover	$250 00
	1 large gilt-frame mirror, 150$	150 00
	1 small do. do. do. 100	100 00
	1 large center-table, 20$; 2 side-tables, 20$	40 00
	1 new set of new strip rept furniture	150 00
	1 " set of green do.	75 00
	2 curtain' & cornishes	30 00
	Lot of matting in parlor	20 00
	2 hat-racks, 35, in passage	35 00
No. 3.	1 set of walnut furniture & bedding	100 00
	1 Brussel/s carpet, 15$; lot chamber-ware, 2$	17 00
No. 4.	1 set of walnut furniture & bedding	125 00
	1 carpet, 15; lot chamber-ware, 2$	
	1 mirror, 15$	
No. 5.	1 set of walnut furniture & bedding	100 00
	1 carpet, 8$	8 00
No. 2.	1 set of walnut furniture & bedding	100 00
	1 carpet, 5$	5 00
No. 20 & 19.	1 set of walnut furniture, &c	60 00
No. 17.	1 set of bed-room furniture & bedding	60 00
	1 table, 5$; 1 carpet, 8$	13 00
		1,438 00

We, the undersigned, citizens of the District of Columbia, having been duly summoned & sworn by the marshal of the District, do appraise the goods & chattels named in the within to the sum of fourteen hundred & thirty-eight dollars.

Witness our hands & seal this 30th of Augt., 1871.

JAMES EDWARDS. [SEAL.]
LEVICK PALMER. [SEAL.]
JAS. MCKENNA. [SEAL.]

208 SATURDAY, *December* 9, 1871.

Session resumed pursuant to adjournment; MacArthur, justice, presiding.

BENJAMIN BEALL, ALPHEUS MIDDLETON, AND Jesse Middleton, plffs.,
v.
GEORGE W. BUNKER & THOMAS M. PLOWMAN, as G. W. Bunker & Co., defts. } At law. No. 8849.

The plaintiffs, having duly verified their demand, come here now, by their attorney, Mr. Lovejoy, and pray judgment thereon against the defendants, and judgment of condemnation against the goods and chattels of the defendants attached herein, August 30, 1871, by the marshal, and it appearing that defendants, though served with copies of the declaration, notice to plead, and summons, Sept. 28, 1871,
209 hath not pleaded to the action; therefore it is considered that

the plaintiffs recover against them nine hundred and twenty-five dollars, principal of the account sued on, with interest thereon from Aug. 1, 1871, and $ costs of suit, and have execution thereof, and no cause being shown to the contrary, it is further considered that the goods and chattels of the defendants so attached by the marshal as aforesaid, and which are specifically described in the marshal's schedule returned and filed in this case, be, and the same is hereby, condemned towards the satisfaction of the plaintiffs' said recovery and costs, and that they have execution thereof.

(Execution on above judgment of condemnation issued Jan'y 18, 1872.)

210 *Declaration.*

In the supreme court of the District of Columbia, Aug. 29, 1871.

BENJAMIN BEALL, PLAINTIFF,
vs.
GEORGE W. BUNKER AND THOMAS PLOWMAN, defendants. } At law. No. *No.* 8850.

The plaintiff sues the defendants for the defendants' use by the plaintiff's permission of the house and premises situate in the city of Washington, District of Columbia, to wit: That part of what is now known as the St. James Hotel, at the southeast corner of 6th street west and Pennsylvania avenue, which is above the store of Beall & Baker, numbered 490 on said avenue.

And the plaintiff claims $383\frac{31}{100}$, with interest and costs, according to annexed particulars of demand.

BEN. G. LOVEJOY,
Plff.'s Atty.

211 *Notice to plead.*

The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise, judgment.

BEN. G. LOVEJOY,
Plff.'s Atty.

Messrs. Geo. W. Bunker & Thomas Plowman to Benjamin Beall, Dr.

1870.			
Oct. 1.	To one month's rent of addition to St. James Hotel.		108 $33\frac{1}{3}$
Nov. 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
Dec. 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
1871.			
Jan'y 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
Feb'y 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
Mch. 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
Apl. 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
May 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
June 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
July 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
Aug. 1.	" " " " " " " " " "		108 $33\frac{1}{3}$
			1,191 $66\frac{2}{3}$

Cr. on above:

1870.—Oct.	31.	By cash on rent.....	41	67
212 Nov.	30.	" " " "	116	67
Dec.	30.	" " " "	108	33
1871.—Feb'y	28.	" " " "	108	33
Mch.	31.	" " " "	108	34
Apl.	29.	" " " "	108	33
May	31.	" " " "	108	33
July	1.	" " " "	108	33
			808	35

Balance due Aug. 1, '71..... ..... $383 31

(Endorsed:) At law. 8850. Benjamin Beall, plff., vs. Geo. W. Bunker and Thos. Plowman, defts. Declaration & ac. Clk. please file. B. G. Lovejoy, plff.'s atty. Filed 30 August, 1871.

Affidavit.

In the supreme court of the District of Columbia, Aug. 29, 1871.

BENJAMIN BEALL, PLAINTIFF,
v.
GEORGE W. BUNKER & THOMAS PLOWMAN, defendants. } At law. No.

Benjamin Beall, plaintiff in this cause, makes oath that the
213 defendants are the plaintiff's tenants, as set forth in the declaration, and that the money he therein claims to be payable to him by the defendants is for rent of said premises due and unpaid at the time of filing said declaration, and to secure which the plaintiff has a tacit lien on the goods and chattels on the premises.

BENJ. BEALL.

Subscribed and sworn to before me this 29th day of August, A. D. 1871. SAML. C. MILLS, *J. P.* [SEAL.]

(Endorsed:) At law. No. 8850. Affidavit. Benjamin Beall, plff., vs. George W. Bunker and Thomas Plowman, d'f'd'ts. Clk. please file. B. G. Lovejoy, plff.'s atty. Filed 30 Aug't, 1871.

Summons.

In the supreme court of the District of Columbia, the 30th day of August, 1871.

214 BENJAMIN BEALL, PLAINTIFF,
v.
GEORGE W. BUNKER & THOMAS PLOWMAN, DEfendants. } At law. No. 8850.

The President of the United States to the defendants, greeting:

You are hereby commanded to appear in this court on the first day of its special term occurring 20 days after service of this writ on you to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

D. K. CARTTER, *Chief-Justice.*

Witness:
LOVEJOY.

[SEAL.] R. J. MEIGS, *Clerk.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

(Endorsed:) No. 8850. Benjamin Beall vs. Bunker & Plowman. Issued 30th August, 1871.

I do authorize & depute L. M. Graves to serve this writ.
Aug't 30, '71. A. SHARP, *Marshal.*

215 Served copies of the declaration, notice to plead, and this summons on the defendant Thomas Plowman. Not to be found Bunker, the 2' day of Sept., 1871.

A. SHARP, *Marshal.*

On Bunker, Sept. 28, '71.
S'd on Plowman, Sept. 2, '71.

GRAVES.

Served copy of sum's & decl. on Bunker.

A. SHARP, *Marshal.*

SEPT. 28TH, '71.

Attachment.

In the supreme court of the District of Columbia, the 30th day of August, 1871.

BENJAMIN BEALL
v.
GEORGE W. BUNKER & THOMAS PLOWMAN. } At law. No. 8850.

The President of the United States to the marshal of the District of Columbia, greeting:

You are hereby commanded to attach, seize, and take into your custody such of the defendants' goods and chattels as are subject
216 to execution for debt which shall be found on the premises occupied by him as tenant of the plaintiff, in this District, to the value of $383.31, the amount of the plaintiff's demand against the defendant for rent, as shown by his affidavit duly filed, according to the act of Congress in such case made and provided.

D. K. CARTTER, *Chief-Justice.*
R. J. MEIGS, *Clerk.*

Witness:
LOVEJOY.

(Endorsed:) No. 8850. Attachment for rent. Benjamin Beall vs. Bunker & Plowman. Issued 30' Aug't, 1871. Rent due $383.31. Attached as per schedule, Aug't 30th, 1871. A. Sharp, marshal. Marshal's fees, $17.37. Phillips.

Schedule.

BENJ'N BEALL
vs.
BUNKER & PLOWMAN. } No. 8850. Atta. for rent. Schedule.

Room 38: 1 set of bed-room walnut furniture & bedding.....	$50 00
1 carpet, $6; 1 set of walnut rept furniture, $35.....	41 00
1 center table, $8; 1 mahogany-frame mirror, $25.....	33 00

	1 carpet & rug, $15; 1 small table, $1	16 00
217	Room 36: 1 set of bed-room walnut furniture & bedding.	50 00
	1 carpet, $6; 1 set of walnut rept furniture, $35	41 00
	1 center table, $8; 1 mahogany-frame mirror, $25	33 00
	1 carpet & rug, $15; 1 small table, $1	16 00
	Rooms 60 & 61: 1 set of bed-room walnut furniture & bedding.	50 00
	1 carpet, 68; 1 set of walnut rept furniture, $35	41 00
	1 center table, $8; 1 mahogany-frame mirror, $25	33 00
	1 carpet & rug, $15; 1 small table, $1	16 00
	Room' 62 & 63: 1 set of bed-room walnut furniture & bedding.	50 00
	1 carpet, $6; 1 set of walnut rept furniture, $35	41 00
	1 center table, $8; 1 mahogany-frame mirror, $25	33 00
	1 carpet & rug, $15; 1 small table, $1	16 00
		560 00

We, the undersigned, citizens of the District of Col., having been duly summoned & sworn by the marshal of said District, do appraise the goods and chattels named in the above schedule to the sum of $560.

Witness our hands & seals this 30th of August, 1871.

JAMES EDWARDS. [SEAL.]
LEVICK PALMER. [SEAL.]
JAS. McKENNA. [SEAL.]

218 SATURDAY, *December* 9, 1871.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

BENJAMIN BEALL, PLFF.,
vs.
GEORGE W. BUNKER & THOMAS PLOWMAN, defts. } At law. No. 8850.

And now comes the plaintiff, by his attorney, Mr. Lovejoy, and prays judgment of his demand against the defendants duly verified, and also judgment of condemnation of the goods and chattels of the defendants attached by the marshal in this case, August 30, 1871, and it appearing that defendants, although served with copies of the declaration, notice to plead, and summons, Sept. 28, 1871, hath not pleaded to the
219 action, therefore it is considered that the plaintiff recover against them three hundred eighty-three dollars and thirty-one cents, with interest thereon from August 1, 1871, and $ costs of suit; and nothing being shown to the contrary, it is considered that the goods and chattels of defendants attached by the marshal August 30th, 1871, and specifically set out in the schedule of the marshal, and filed in this cause, be, and the same are hereby, condemned towards the satisfaction of the plaintiff's said recovery, and that he have execution thereof.

(Execution on above judgment of condemnation issued January 18, 1872.)

220 *Declaration.*

In the supreme court of the District of Columbia.

BENJAMIN BEALL, ALPHEUS MIDDLETON, AND Jesse Middleton, plaintiffs,
vs.
GEORGE W. BUNKER AND THOMAS M. PLOWman, defendants. } At law. No. 9166.

The plaintiffs sue the defendants for the defendants' use by the plaint-

iffs' permission of the house of the plaintiffs, situate in Washington City, in the District of Columbia, and known as the St. James Hotel, and the plaintiffs claim $1,333.33⅓, according to the annexed particulars of demand, with interest and costs.

BEN. G. LOVEJOY,
Plaintiffs' Attorney.

221 The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

BEN. G. LOVEJOY,
Plffs.' Atty.

George W. Bunker & Thos. M. Plowman to Benj. Beall, Alpheus Middleton, & Jesse Middleton, Dr.

1871, Sept.	1.	For one month's rent of St. James Hotel..	333 33⅓
Oct.	1.	.....	333 33⅓
Nov.	1.	.....	333 33⅓
Dec.	1.	.....	333 33⅓
			$1,333 33⅓

DISTRICT OF COLUMBIA,
County of Washington:

Personally appeared before me, in my county aforesaid, Benjamin Beall, who, being duly sworn, says he is a plaintiff in the above cause of Beall et al. vs. Bunker et al; that the rent claimed in the declaration and according to the annexed account is due and unpaid.

BENJ. BEALL.

Subscribed and sworn to before me this 29th day of December, 1871.
SAML. C. MILLS, *J. P.*

222 (Endorsed:) 9166. Beall et al. vs. Bunker & Plowman. Clk. please issue attachment for rent, &c. Ben. G. Lovejoy, plffs.' atty. Filed 30th December, 1871.

Summons.

In the supreme court of the District of Columbia, the 30th day of December, 1871.

BENJAMIN BEALL, ALPHEUS MIDDLETON, & Jesse Middleton, plaintiffs,
vs.
GEORGE W. BUNKER & THOMAS M. PLOWman, defendants.
} At law. No. 9166.

The President of the United States to the defendants, greeting:

You are hereby commanded to appear in this court, on the first day of its special term occurring 20 days after service of this writ on
223 you; to answer the plaintiffs' suit, and show why 'he' should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

LOVEJOY.

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

(Endorsed:) No. 9166. Beall & Middleton vs. Bunker & Plowman. Issued 30 December, 1871.

Served copies of the declaration, notice to plead, and affidavit, & this summons, on both defendants, the 5 day of Jan'y, 1872.

A. SHARP,
Marshal.

S'd Jan. 5th, 1872.

L. M. GRAVES.

Attachment for rent.

In the supreme court of the District of Columbia, the 30th day of December, 1871.

224 BENJAMIN BEALL, ALPHEUS MIDDLETON, & Jesse Middleton
vs.
GEORGE W. BUNKER & THOMAS M. PLOWMAN. } At law. No. 9166.

The President of the United States to the marshal of the District of Columbia, greeting:

You are hereby commanded to attach, seize, and take into your custody such of the defendants' goods and chattels as are subject to execution for debt which shall be found on the premises occupied by him as tenant of the plaintiff', in this District, to the value of $1,000.0 , the amount of the plaintiffs' demand against the defendants for rent, as shown by his affidavit duly filed, according to the act of Congress in such case made and provided, and $30 ju. cost.

Witness:

D. K. CARPER,
Chief Justice.
R. J. MEIGS, *Clerk.*

LOVEJOY.

225 (Endorsed:) No. 9166. Attachment for rent. Beall & Middleton v. Bunker & Plowman. Issued 30 December, 1871. Rent, $1,000.0 ; ju. co', 30. Attached, as per schedule, Dec'r 30th, '71. A. Sharp, marshal.

BEALL & MIDDLETON & AL.
vs.
BUNKER & PLOWMAN. } No. 9166. Atta.

Schedule.

Dining-room:

17 dining-tables, 170$; 88 chairs, 88$	$258 00
12 casters, 36$; 2 mirrors, 200$	236 00

	77 goblets, 20$; 13 sugar-bowl', 10$	30 00
	14 cream-mugs, 7$; lot spoons & knives & forks, 50$	57 00
	5 jelly-glasses, 2$; lot china, 25$	27 00
	1 clock, 10$; 1 side-board, 25$	35 00
	Lot table-linen, 30$; 1 do. do., 5	35 00
No. 6 & 7.	1 set bed-room furniture, 60$; 1 wardrobe, 30$	90 00
	1 bureau, 25$; 1 lounge, $5; 1 table, 8$	38 00
	1 carpet, 8$; 6 chairs, 25$	33 00
226 No. 8.	1 set bed-room furniture, &c	30 00
	1 lounge, 5$; 5 chairs, 10$; 3 tables, 10$	25 00
	1 carpet & rug, 5$	5 00
No. 10.	1 set of chamber-furniture & glass	50 00
11.	1 set of do. do. do.	50 00
12.	1 do. do. do. do.	25 00
13.	1 do. do. do. do.	40 00
15.	1 do. do. do. do.	8 00
14.	1 do. do. do. do.	60 00
16.	1 do. do. do. do.	25 00
26.	1 do. do. do. do.	50 00
24.	1 do. do. do. do.	50 00
25.	1 do. do. do. do.	5 00
22.	1 do. do. do. do.	40 00
		$1,302 00
	Amt. brough' forward	$1,302 00
No. 23.	1 set of bed-room furniture	10 00
21.	1 set do. do. do.	30 00
54.	4 do. do. do. do.	30 00
56.	1 do. do. do. do.	35 00
55.	1 do. do. do. do.	15 00
		$1,422 00

227 We, the undersigned, citizens of the District of Col., having been duly summoned & sworn by the marshal of said District, do appraise the goods & chattels named in the above schedule to the sum fourteen hundred and twenty-two dollars.

Witness our hands & seals this 30th day of Dec'r, 1871.

W. S. O'NEAL. [SEAL.]
ROBT. A. GRIFFIN. [SEAL.]
JED'H GITTINGS. [SEAL.]

Judgment.

WEDNESDAY, *February* 7, 1872.

Session resumed pursuant to adjournment; MacArthur, justice, presiding.

BENJAMIN BEALL, ALPHEUS MIDDLETON, AND Jesse Middleton, plffs.,
vs.
GEORGE W. BUNKER AND THOMAS M. PLOWman, defts.
} At law. No. 9166.

228 The plaintiffs, having duly verified their demand, come here now

by their attorney, Mr. Lovejoy, and pray judgment thereon against the defendants, and judgment of condemnation against the goods and chattels of the defendants attached by the marshal Dec'r 30, 1871; and it appearing that the defendants, though served with copies of the declaration, notice to plead, and summons January 5, 1872, have not pleaded to the action, therefore it is considered that the plaintiffs recover against them one thousand three hundred thirty-three dollars and thirty-three and ⅓ cents principal of the account for rent sued on, and $ costs of suit, and no cause being shown to the contrary, it is considered that the goods and chattels of the defendants attached by the marshal as aforesaid, and particularly described in the schedule returned
229 by the marshal, be, and the same are hereby, condemned towards the satisfaction of the plaintiffs' said recovery and costs, and that the plaintiffs have execution thereof.

(FEBRUARY 8, 1872.—Writ of execution issued on said judgment of condemnation to the marshal aforesaid.)

230 *Declaration.*

In the supreme court of the District of Columbia.

BENJAMIN BEALL, PLAINTIFF, *vs.* GEORGE W. BUNKER AND THOMAS M. PLOWMAN, defendants. } No. 9167. At law.

The plaintiff sues the defendants for the defendants' use, by the plaintiff's permission, of the premises of the plaintiffs, being the addition to the St. James Hotel, situate in Washington City, in the District of Columbia, and the plaintiff claims $433.33, according to the annexed particulars of demand, with interest and costs.

BEN. G. LOVEJOY,
Plff's'. Atty.

The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof;
231 otherwise judgment.

BEN. G. LOVEJOY,
Plff's' Atty.

Messrs. Geo. W. Bunker & Thomas M. Plowman to Benj. Beall, Dr.

1871.			
Sept.	1.	For one month's rent, addition to St. James Hotel.	$108 33⅓
Oct.	1.	" " " " " " " "	108 33⅓
Nov.	1.	" " " " " " " "	108 33⅓
Dec.	1.	" " " " " " " "	108 33⅓
			$433 33⅓

DISTRICT OF COLUMBIA,
County of Washington:

Personally appeared before me, in my county aforesaid, Benjamin Beall, who, being duly sworn, says he is plaintiff in the above cause of Beall v. Bunker & Plowman; that the rent claimed in the declaration and according to the annexed account is due and unpaid.

BENJ. BEALL.

Subscribed and sworn to before me this 29th day of December, 1871.
SAML. C. MILLS, *J. P.* [SEAL.]

232 (Endorsed:) 9167. Beall v. Bunker & Plowman. Clk. please issue attachment for rent, &c. Ben. G. Lovejoy, atty. for plff. Filed 30 December, 1871.

Summons.

In the supreme court of the District of Columbia, the 30th day of December, 1871.

BENJAMIN BEALL, PLAINTIFF,
v.
GEORGE W. BUNKER & THOMAS M. PLOWMAN, defendants. } At law. No.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have
233 judgment against you for the cause of action stated in his declaration.

Witness, D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

LOVEJOY.

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

(Endorsed:) No. 9167. At law. Benjamin Beall vs. Bunker & Plowman. Issued 30th December, 1871.

Served copies of the declaration, notice to plead, and affidavit, and this summons, on both the defendants the 5 day of Jan'y, 1872.

A. SHARP,
Marshal.

Sd. Jan. 5th, 1872.

L. M. GRAVES.

Attachment for rent.

In the supreme court of the District of Columbia, the 30th day of December, 1871.

BENJAMIN BEALL
vs.
GEORGE W. BUNKER & THOMAS M. PLOWMAN. } At law. No. 9167.

234 The President of the United States to the marshal of the District of Columbia, greeting:

You are hereby commanded to attach, seize, and take into your custody such of the defendants' goods and chattels as are subject to execution for debt which shall be found on the premises occupied by him as tenant of the plaintiff, in this District, to the value of $325, the amount

of the plaintiff's demand against the defendant for rent, as shown by his affidavit duly filed according to the act of Congress in such case made and provided, & $30 int. cost.

Witness, D. K. Cartter, chief-justice.

R. J. MEIGS, *Clerk.*

LOVEJOY.

(Endorsed:) No. 9167. Attachment for rent. Benjamin Beall vs. Bunker & Plowman. Issued 30' December, 1871. Rent $325.0, in. co. 30, attached as per schedule, Dec'r 30th, '71. A. Sharp, marshal.

235 *Schedule.*

BENJAMIN BEALL v. BUNKER & PLOWMAN. } No. 9167. Atta. schedule.

No. 41.	1 set bed-room furniture		$25 00
42.	1 do.	do.	20 00
43.	1 do.	do.	25 00
44.	1 do.	do.	20 00
45.	1 do.	do.	20 00
46.	1 do.	do.	20 00
65.	1 do.	do.	25 00
66.	1 do.	do.	20 00
67.	1 do.	do.	25 00
69.	1 do.	do.	25 00
68.	1 do.	do.	15 00
70.	1 do.	do.	25 00
64.	1 do.	do.	12 00
39.	1 do.	do.	50 00
38.	1 mirror, 25$; 1 table, 10$; 1 sofa, 10$		45 00
	5 chairs, 15$; 2 tables, 1$; 1 carpet, 10$		26 00
36.	1 mirror, 25$; 1 table, 10$; 1 sofa, 10$		45 00
	5 chairs, 15$; 2 tables, 1$; 1 carpet, 10$		26 00
37.	1 set bed-room furniture		40 00
			$509 00

236 We, the undersigned, citizens of the District of Col., having been duly summoned by the marshal of said District, do appraise the goods & chattels named in the foregoing schedule to the sum of five hundred & nine dollars.

Witness our hands & seals this 30th of Dec'r, 1871.

W. S. O'NEAL. [SEAL.]
ROBERT A. GRIFFIN. [SEAL.]
JED'H GITTINGS. [SEAL.]

237 *Judgment.*

WEDNESDAY, *February* 7, 1872.

Session resumed pursuant to adjournment; MacArthur, justice, presiding.

BENJAMIN BEALL, PLFF., v. GEORGE W. BUNKER AND THOMAS M. PLOWMAN, defts. } At law. No. 9167.

The plaintiff, having duly verified his demand, comes here now, by his

attorney, Mr. Lovejoy, and prays judgment thereon against the defendants, and judgment of condemnation against the goods and chattels of the defendants attached in this case by the marshal Dec'r 30, 1871; and it appearing that the defendants, though served with copies of the
238 declaration, notice to plead, and summons, Jan'y 5, 1872, have not pleaded to the action, therefore it is considered that the plaintiff recover against them four hundred thirty-three dollars and thirty-three cents, principal of the account for rent sued on, and $ costs of suit; and no cause being shown to the contrary, it is considered that the goods and chattels attached by the marshal as aforesaid, to wit, fifteen sets bed-room furniture, two mirrors, four tables, two sofas, ten chairs, and two carpets, be, and the same are hereby, condemned towards the satisfaction of the plaintiff's aforesaid recovery, and that the plaintiff have execution thereof.

(Execution on above judgment of condemnation issued February 8, 1872.)

239 Supreme court of the District of Columbia.

ELIAS E. WHITE ET AL. *vs.* BENJ. F. BEALL ET AL. } 2779. Eq. doc. 11.

This cause coming on to be heard, and being considered upon the motion of defendant's solicitor, in absence of the solicitor of complainant, that the cause be certified to the general term, it is, this 14th January, 1874, ordered that the same be, and hereby is, so certified, to be h'ard in the first instance.

By the court.

A. WYLIE.

Decree in general term.—Filed June 6, 1874.

In the supreme court of the District of Columbia, in general term, June 6, 1874.

ELIAS E. WHITE, ORESTES P. DODGE, SAMUEL L. Phillips, Wm. L. Wall, & Thos. Berry, *vs.* BENJAMIN BEALL, REUBEN F. BAKER, AND Freedman's Savings & Trust Company. } 2779. Equity.

240 This cause came on to be heard on a former day of the present term, and was argued by counsel on both sides; and thereupon, on consideration thereof, the court declares that the deeds of trust in the proceedings mentioned are entitled to priority of satisfaction out of the funds in the hands of the complainants as against the rents due from the tenants to the landlord, and it is referred to the auditor of the court to take and state an account of the funds in the hands of the trustees; also to state in what proportion the same should be divided between the beneficiaries in the said deeds of trust. And the court further declares that the balance of said funds remaining after satisfaction of said deeds shall be paid by the trustees, complainants, to the landlord. And the court orders that the case be remanded to the
241 special term, to which the auditor shall make his report, and which shall direct the distribution of said funds according to this order and the opinion of this court.

By order of the court.

Petition for leave to appeal to Sup. Ct. U. S.—Filed June 17, 1874.

To the supreme court of the District of Columbia:

The petition of Benjamin Beall and Reuben F. Baker shews that your petitioners are aggrieved by a decree of this court, rendered in general term on or about the 6th day of this present month of June, 1874, in the cause of Elias E. White et al. vs. Benjamin Beall & al., No. 2779, equity docket 11, and have entered an appeal from said decree to the Supreme Court of the United States.

Your petitioners pray that said appeal may be allowed as well in behalf of your petitioner Benjamin Beall, in his separate right of your petitioners, and that amount of a supersedeas bond may be fixed; & as in duty, &c.

W. D. DAVIDGE,
Sol'r for Petitioners.

242 The appeal is allowed, and the amount of the supersedeas bond is fixed at $1,000, the fund being in the possession of the complainant.

A. WYLIE, *Justice.*

JUNE 17, 1874.

Appeal-bond to S. C. U. S.—Filed June 17, 1874.

In the supreme court of the District of Columbia, the 17 day of June, 1874.

ELIAS E. WHITE, CRESTES P. DODGE, SAMUEL L. Phillips, William L. Wall, & Thomas Berry
vs.
BENJAMIN BEALL, REUBEN F. BAKER, AND Freedman's Savings & Trust Company. } No. 2779. Eq. doc. 11.

Know all men by these presents that we, Benjamin Beall, Alpheus Middleton, and Reese Robey, are bound unto the above-named Elias E. White and the other complainants, and unto the Freedman's Savings and Trust Company, and each and every of them, in the sum of one thousand (1,000) dollars, to be paid to the said Elias E. White and the other complainants, and unto the Freedman's Savings & Trust Company, and each every of them, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 17th day of June, 1874.

Whereas the above-named Benjamin Beall & Reuben F. Baker hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Benjamin Beall, Reuben F. Baker, and Reese Robey shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

BENJ. BEALL. [SEAL.]
ALPHEUS MIDDLETON. [SEAL.]
REESE ROBEY. [SEAL.]

Sealed and delivered in presence of—
W. D. DAVIDGE.

Approved.

A. WYLIE.

Clerk's certificate.

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 10th day of October, 1874.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 185. Benjamin Beall and Reuben F. Baker, appellants, vs. Elias E. White et al. District of Columbia. Sup. court. Filed 17th October, 1874.

United States Supreme Court.

OCTOBER TERM, 1876.

No. 185.

BENJAMIN BEALL AND REUBEN F. BAKER,

APPELLANTS,

vs.

ELIAS E. WHITE ET AL.

BRIEF FOR APPELLANTS.

WALTER D. DAVIDGE,

For Appellants.

National Republican Printing House.

IN THE

Supreme Court of the United States.

BENJAMIN BEALL and REUBEN F. BAKER, Appellants, *vs.* ELIAS E. WHITE et al.	No. 185. October Term, 1876.

STATEMENT.

On the 30th of March, 1867, by indenture of lease of that date, Alpheas Middleton and John Hyatt, executors of Benjamin F. Middleton, deceased, and Benjamin Beall, leased to George W. Bunker and William H. Crosby, for the term of five years from the 1st of April, 1867, the hotel at the corner of Pennsylvania avenue and Sixth street west, then known as the "Clarendon Hotel," at the yearly rent of $4,000, payable in equal monthly installments on the last day of each month during said term, and with the proviso that if any rent should be in default for thirty days the tenancy created by the lease should at the election of the lessors, declared in writing, cease and determine, and the tenancy should become a tenancy at will, determinable according to the act of Congress.

The indenture contained covenants on the part of the lessees for payment of rent during the term and in the mode prescribed, not to let or sub-let the demised premises without the written consent of the lessors, and for the peaceable surrender of the premises at the end of the term or additional term, and, on the part of the lessors, for quiet enjoyment and for the renewal of the lease for another term of five years, upon written application for such renewal not more than six

nor less than three months before the expiration of the term granted.

Record, 31, 32.

Under this lease the lessees entered into possession, fitted up the hotel with the necessary furniture, and commenced the business of hotel-keeping, the name of the house being changed to "Bunker's Avenue Hotel."

At the time of the lease Thomas M. Plowman was a partner with the lessees in the business.

On the 2d of October, 1868, Crosby sold out and assigned his interest in the lease and furniture to his co-partners, Bunker and Plowman.

Record, 32, 33.

In December, 1868, a tenement belonging to Benjamin Beall, in his own right, and adjoining the hotel, having been previously remodeled and connected with the hotel at great expense, was leased to Bunker and Plowman at the yearly rent of $1,300, payable monthly. This tenement was then fitted up with the necessary furniture, and the whole property was used and occupied together as what was known as the "St. James Hotel."

On the 6th of April, 1867, five days after the commencement of the lease, Bunker and Plowman, the lessees, gave a deed of trust upon all the furniture then in the Clarendon Hotel to Orestes B. Dodge, trustee, and to secure two notes of even date with the deed, and in favor of A. T. C. Dodge, each for $1,250, and payable in nine and twelve months.

Record, 5 to 9.

On the 2d of October, 1868, the day when Crosby sold out, Bunker and Plowman gave a deed of trust upon all the furniture then in the hotel and all additions to such furniture, and all furniture to be placed in the Beall tenement, then in course of improvement, and also upon the demised term and any term the grantors might obtain in the Beall property, to Samuel L. Phillips, trustee, to secure two notes, of

even date, and in favor of Crosby, and given for his interest in the lease and furniture, each for $3,500, and payable at six and twelve months.

Record, 8, 9.

On 17th of April, 1869, Bunker and Plowman conveyed their lease-hold interest in the "St. James Hotel," (being both tenements,) together with all the furniture therein, to Samuel L. Phillips, trustee, in trust to secure a continuing credit given by Beall and Buker, parties in the grocery business, to the grantors to the amount of $5,000, and to continue for two years.

On the 20th of December, 1869, Bunker and Plowman gave a further deed of trust to Elias E. White, trustee, in trust to secure a further indebtedness of $3,044.77 to Beall & Baker.

The note at twelve months in favor of A. T. C. Dodge, secured by the first deed of trust, and the note at twelve months secured by the second deed of trust, are claimed by the Freedman's Saving and Trust Co., and give rise to the present controversy.

Both notes were taken by the bank when overdue, and in respect of the second, the makers, after payment, transferred the note to the bank as collateral, and the bank received it upon the broad ground that although paid and in the possession of the makers, it could not lose its vitality until the release of the deed of trust.

Dep. of Stickney, Record 34, 35.
Dep. of Crosby, Record 43, 44.
Dep. of Soran, Record 46, 47.

On the 10th of April, 1871, Bunker and Plowman assigned their leasehold interest and the furniture in the hotel to John Spicer, and late in the same month put him in possession. The lessees refused to recognize Spicer as tenant. Rent was subsequently paid, but received and receipted for as due by Bunker and Plowman. The consideration of the assignment, ostensibly $19,250, was in reality $3,400, the residue being represented by the liens upon the property assigned.

On the 29th of August, 1871, two suits in attachment were brought for rent due under the two demises, and on the 30th of December, 1871, two other similar suits. In these suits chattels upon the separate premises were seized by the marshal, and judgments of condemnation regularly entered.

The proceedings in these suits are set out in full. (Record 56, 60, 63, 67.)

Bunker and Plowman were indebted to Beall and Baker, under the above-mentioned deeds of trust in their behalf, in an amount exceeding $10,000, and at their instance the trustees proceeded to enforce said deeds.

The marshal had continued to hold the property under the attachment suits.

In this state of things the property was sold by the trustees under the different deeds of trust, and with the consent of Spicer, set out. (Record 50, 51.)

The trustees then filed their bill of interpleader (Record 1) against Beall, and Beall and Baker, and the Freedman's Savings and Trust Co., (or the bank as for brevity it has been called,) for the distribution of the fund arising from the sale. The defendants answered. (Record 3, 10.)

The court decreed that the different deeds of trust were entitled to priority of payment as against the landlords, (Record 70,) and from that decree Beall, and Beall and Baker, appealed to this court.

ASSIGNMENT OF ERROR.

The Court erred in the decree in declaring that the deeds of trust were entitled to priority of payment as against the liens of the landlords.

POINTS.

I. The lien given by the act of Congress of February 22, 1867, (14 Stat. 404 S. 12,) upon the chattels of the tenant is made to commence with the tenancy and to continue for three months after the rent is due and until the termination of

any action for such rent brought within said three months.

Such a lien takes precedence over a mortgage given upon chattels after they have been placed upon the premises.

Webb v. Sharpe, 13 Wall., 14.
Fowler v. Rapley, 15 Wall, 328.

The deed of trust under which the bank claims the Dodge note was given five days after the commencement of the tenancy, and the chattels conveyed were described as then being upon the premises.

The other deed of trust under which the Crosby note is claimed by the bank is dated the 2d of October, 1868, eighteen months after the commencement of the tenancy. This deed purports to convey the chattels then upon the demised premises, and also further acquired chattels to be placed in the Beall tenement. In respect of the former, the deed is plainly subordinated to the statutory lien.

And in respect to future acquired chattels it is submitted that the deed is in fraud of the landlord's lien and void.

The Beall building was not leased until December, 1868. (Record, 4, 10.)

It was not competent for Bunker and Plowman to give the deed of trust upon chattels to be placed in the Beall building, which chattels they did not own, and upon which the deed would be in derogation of the rights of the landlord.

Otis v. Sill, 8 Barbour, 102.
Mogg v. Baker, 3 Mees. & W., 195.
Winslow v. Merchants' Co., 4 Met., 306.
Jones v. Richardson, 10 Met., 481.
Rose v. Bevan, 10 Md., 466.

Courts of equity will give effect to mortgages of after-acquired property, but only where no rule of law is infringed, or rights of a third party prejudiced.

Pennock v. Coe, 23 How., 117.
Dunham v. Railway Company, 1 Wall., 254.
Butt v. Ellett, 19 Wall., 544.

The Beall building is referred to in the deed as an addition to the hotel then being erected. (Record, 9.) And the agreement for such erection, (Record, 25,) signed by Beall and Plowman and witnessed by Bunker, declares that the building was to be used as an addition to the hotel. It is plain that the lease of the building as an addition to the hotel was in the contemplation of all the parties.

To give effect to the deed of trust, in respect of after acquired chattels, to be placed in the building, would be to allow Beall to be deprived of his statutory right without his consent.

It is not pretended that he gave his consent, or was aware of the deed of trust before he leased the building.

There is no law of this District authorizing the registration of a deed of trust of property to be in future acquired.

Eo instanti that chattels are placed upon the premises the lien of the landlord attaches.

Webb v. Sharp, p. 16.

II. But it is contended by the bank that, conceding the original priority of the statutory liens for rent, such priority was not properly enforced, and was in consequence lost. It is said that by the alleged assignment from Bunker and Plowman to Spicer, the latter became the tenant, and should have been proceeded against instead of Bunker and Plowman; and it is further said that such assignment, with the alleged consent of one of the lessors, worked under the circumstances a surrender of the terms assigned, and the grant of a new lease in favor of Spicer.

1. The answer to these extraordinary propositions is, that the proceedings to enforce were by attachment, and the judgments rendered essentially judgments *in rem*, and cannot be collaterally impeached except for fraud or collusion. The only question open is that of the jurisdiction of the court; for if it had jurisdiction it had power to decide every question involved, and whether it decided correctly or incorrectly

the decision is binding not only in the same but in every other court.

Cooper v. Reynolds, 10 Wall., 308.
Voorhees v. Bank of U. S., 10 Pet., 449

By the act of Congress the landlord's lien may be enforced by "attachment to be issued upon affidavit that the rent is due and unpaid." The jurisdiction of the Court depended upon the levy of the attachment, or at farthest upon the affidavit and subsequent levy.

Cooper v. Reynolds, p. 319.

The jurisdiction of the Court attaching it had power to subject the property attached to the plaintiff's demands.

The affidavits were regular.

Record, 57, 61, 64, 67.
And see also Green v. Van Buskirk, 7 Wall., 139.
Cochran v. Fitch, 1 Sandf., ch. 142.

Attention is called to the manifest distinction between an attachment for the enforcement of the landlord's lien and an attachment against non-resident and absconding debtors. (Act of June 1, 1866, 14 Stat., 54.) In the latter personal process is requisite, and the attachment is merely auxiliary to the suit *in personam*. In the former no personal process is necessary, but the proceeding is purely *in rem*, depending exclusively upon the seizure. The design of Congress when abolishing the remedy by distress, was to afford the landlord a summary remedy by a proceedings *in rem*.

The judgments then have conclusively determined that the chattels attached were liable for the rent. The status of the chattels has thus been conclusively fixed.

The remedy of the bank, if any, is against the marshal or other party concerned in a wrongful seizure.

2. Even if it be assumed that the judgments did not affect the title of the bank to the property attached, the right of the bank is then simply to assert that title. It has already

been shown that such title was in its origin subordinate to the statutory lien. But, whatever the title, it and it only can be asserted. The bank cannot ravel into the proceedings in the attachments, re-try the questions involved, or show error or irregularity as against unreversed judgments. It cannot say, my title in its origin, junior, has become senior and supreme in consequence of error committed in the enforcement of the statutory liens, notwithstanding the judgments to the contrary of a court of competent jurisdiction

Suppose the chattels attached belonged, by virtue of the alleged assignments, not to Bunker and Plowman, but to Spicer, what injury accrued to the bank? Spicer was the party to complain. He made no complaint, but, on the contrary, recognized the rights of the landlords and the judgments of the court in enforcement of those rights, and entered into a written stipulation to that effect.

Record, 50, 51.
And see Parker v. Rochester, 4 Johns., ch. 329.
French v. Shotwell, 5 Johns., ch. 555.
Shufelt v. Shufelt, 9 Paige, 137.
DeWolf v. Johnson, 10 Wheat., 367.

3. As to the assignment.

It seems to be doubtful whether the assignment by Bunker and Plowman to Spicer (Record, 24,) was legal without the consent, in writing, of the lessors in the indenture of lease. The covenant is not to *let or sub-let* without written consent. (Record, 32.) That such a covenant precludes an assignment, see Woodfall L. & T., 553, 9th ed.; Greenaway v. Adams, 12 Ves., 395; Den v. Post, 1 Dutch., 295. *Contra:* 1 Taylor on L. & T., s. 403; Lynde v. Hough, 27 Barb., 415. Be the law as it may, the landlords refused to recognize the assignee or to receipt for rent except in the name of Bunker and Plowman, both of whom remained on the premises, though, they say, not as lessees. The legal effect of the assignment, if valid, did not, however, in any manner effect the statutory lien. The lien given by the act of Congress

continued as against the assignees precisely as against the assignors. (Fowler v. Rapley, 15 Wall., 328.) The only pertinency of the assignment is that through it the bank undertakes to collaterally impeach the judgments in the attachment suits, upon the ground that the property seized belonged to Spicer, and not to Bunker and Plowman. It is further to be observed that the indenture contained an express covenant for the payment of rent, under which the assignors were responsible for the rent after assignment. The landlords could sue the assignors or assignees, or both, though entitled to but one execution.

Woodfall L. & T. 111, 209, 210.
Taylor L. & T., ss. 437, 438.

4. Another impeachment of the judgments is that Bunker and Plowman surrendered their leases, and a new demise was made to Spicer, which demise was subsequent to the deeds of trust under which the bank claims.

That there was a surrender in fact is not pretended. The evidence shows none, and by the statute of frauds the surrender, though of a term which could be created by parol, is required to be in writing.

Browne on Frauds, §§ 45, 46.

It is contended, however, that the surrender was by operation of law.

A surrender by operation of law is where some act has been done the validity of which a party is estopped from denying, and which is inconsistent with the continuance of the term.

Taylor, L. & T., §§ 507, 512.
Woodfall, L. & T., 272.

The question here is whether there was a new demise to Spicer, or a state of facts from which the law will imply a new demise.

It may safely be affirmed that there is not a single fact in the cause which is not perfectly consistent with the continuance of the existing leases. The answer of the bank does

not even allege a surrender. (Record, 4 pl. 7.) Beall owned only one tenement. The other, and principal one, was owned by him and the devisees of Middleton, who had attained full age. (Dep. of Lovejoy, Record, 50.) Beall had therefore no power to make a new demise, and the other owners were not even applied to.

The transaction between Bunker and Plowman and Spicer, was fortunately in writing and in terms is an *assignment* of the furniture and lease of the St James Hotel.

Record 24.

Beall would not even recognize Spicer as assignee, much less make a new demise to him. As soon as Beall heard of the assignment, he notified Bunker and Plowman it would not be recognized.

Record 40, 42.

The witnesses for the Bank shew no surrender. Their evidence is entirely consistent with the continuance of the leases. They are all interested, Spicer in his note held by the bank, and Bunker and Plowman are bound on the collaterals and also for the rent.

But what do they say? Their evidence consists of alleged conversations with Beall.

Spicer testifies (Record 18 f. 70) that Beall *suggested* he would confer with the Middleton's, and "he thought, on his advice, they would agree to give a new lease direct to me, (Spicer,) in place of the old lease, for ten years;" and again, in reply to the 8th cross-interrogatory, (Record 15, f. 58,) "if there was an agreement between you and Beall, was it not that you should take the place of Bunker and Plowman under their lease?" Answer. (Record 20 f. 78,) "Yes, sir; until there was a new lease given." The existing leases were therefore to continue.

The same witness says, (Record 17 f. 66,) that Beall offered to *extend* the lease and thereupon he "closed up the trade."

Plowman testifies (Record, 24 and 93,) that the argument was that "he (Spicer) was simply to step into our shoes, to

take what we had and to pay our indebtedness to Mr. Beall." "There was to *be an additional* lease for I think of five years." And again, (Record, 22 and 85,) he says there was to be an *additional* lease for ten years including the balance of the lease.

The covenant in the lease was for a renewal of five years. Bunker has but little to say, and that little will be found Record, 27 and 104: "Spicer was to assume the same responsibility that we had; the papers show our responsibility, the responsibility vested on Spicer, I assuming the same, assuming the proprietorship of the hotel."

Both Baker and Plowman continued in the hotel. (Record, 22.) No rent was accepted from Spicer except in the name of Baker and Plowman. (Record, 20 and 78. Record, 40 and 146.) Spicer was put in possession by Baker and Plowman and not by Beall.

But again: The pretended arrangement had no shadow of validity. By it Spicer was to assume the back rent, the deeds of trust held by Beall and Baker and all other liens after the property, (Record, 22, 23,) and was to have an additional lease for five years, or ten, if the Middletons would consent. Such an arrangement cannot be proved by parol. It involves an agreement to become responsible for the debts of others, and also for the grant of a lease for over three years, and is invalid by the statute of frauds. If ever made it bound nobody.

W. D. DAVIDGE,
Solicitor for Appellants.

IN THE

Supreme Court of the United States.

No. 185.—October Term, 1876.

BENJAMIN BEALL ET AL., Appellants,

vs.

ELIAS E. WHITE ET AL., Appellees.

BRIEF FOR APPELLEES.

ENOCH TOTTEN.
Counsel for F. S. and Trust Co., Appellee.

Jos. L. Pearson, Printer, 9th and D streets, Washington, D. C.

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Supreme Court of the United States.

OCTOBER TERM, 1876.

BENJAMIN BEALL ET AL., Appellants, *vs.* ELIAS E. WHITE ET AL., Appellees.	No. 185.

BRIEF FOR APPELLEES.

The complainants in this cause exhibited their bill in the Supreme Court of the District of Columbia on the 23d day of May, 1872, and alleged that they had sold the personal property contained in the hotel in the City of Washington, known as the St. James Hotel, by virtue of several trust deeds, and also a written agreement with the tenant in possession, and that the proceeds arising from the sale were held by them ready to be brought into court. That the defendant, the Freedman's Savings and Trust Company, owned a part of the debts secured by trust deeds on the personal property so sold, and that the defendants, Beall & Baker, (who are the appellants here,) also held claims secured by other trust deeds on the same property. That the defendant, Benjamin Beall, was the owner of the hotel, and that the property had been occupied by a tenant who was in arrears for rent, and that judgments in attachment had been recovered on account of the rent in arrears. That the funds in the hands of the complainants were claimed

by both Beall & Baker and by the Trust Company, and that there was not sufficient to pay the indebtedness of both. The bill prays that these parties may be compelled to interplead, and that the court shall determine to whom the proceeds of the sale belong.

To this bill all the defendants answered, and testimony was taken by the Freedman's Savings and Trust Company, and by Beall & Baker, in support of their respective claims. From the admissions and evidence in the cause it appears that on the 30th day of March, 1867, Alpheus Middleton and John Hyatt, executors of the last will of Benjamin F. Middleton, deceased, and Benjamin Beall executed an indenture of lease with George W. Bunker and William H. Crosby, whereby the lessors demised to the latter the hotel on the corner of Sixth street and Pennsylvania avenue, in Washington City, and then known as the Clarendon Hotel, for the term of five years, reserving an annual rent of $4,000, payable in equal monthly installments on the last day of each month—(31.) This lease was under seal and contained a covenant on the part of the lessees for the payment of the rent reserved; that they should not let or sub-let the premises, or any part of them, during the term, without the written consent of the lessors, and to surrender the premises at the expiration of their tenancy. The instrument contained covenants on the part of the lessors for quiet enjoyment and for a renewal of the lease for the further term of five years upon notice.

On the 6th day of April, 1867, Bunker and Crosby, the lessees, being indebted to A. T. C. Dodge in the sum of $2,500, made and delivered to him two promissory notes bearing date on that day, for $1,250 each, payable to his order, with interest, in nine and twelve months, respectively. To secure the payment of these two notes Bunker and Crosby duly executed and delivered a deed of trust, whereby they conveyed to Orestes B. Dodge all the personal property in the hotel, with power to sell in case of default in the payment of the notes. The indetedness so secured was for the

purchase-money of a part of the personal property in the hotel, which part was described in a schedule attached to the trust deed.

On the 10th of July, 1868, the defendant Beall began the erection of a building on the premises adjoining the hotel building, to be used as a part of the hotel.—(25.) It was afterwards, in December, 1868, incorporated into the hotel and made a part of it.—(60.)

On the 2nd day of October, 1868, in consideration of the sum of $7,000, Crosby sold to Thomas M. Plowman all his interest in the personal property in the hotel, as well as in the term demised by the lease.—(32.) This transfer of the leasehold interest was subsequently assented to and confirmed by the lessors, and Bunker and Plowman assumed the exclusive management of the hotel, and were recognized and accepted by the lessors as their tenants, and as such tenants they paid rent for the premises for nearly three years.—(19, 27.) Crosby at the time of the transfer retired from the business.

On the day they made the purchase of the lease and chattels from Crosby, they made and delivered to him, for the purchase-money (43), two promissory notes of like date, each for the sum of $3,500, payable with interest to the order of Crosby in six and twelve months from date, respectively. To secure the payment of these two notes, Bunker and Plowman executed a trust deed, by which they conveyed to Samuel L. Phillips, one of the complainants, all the personal property and fixtures in and about the hotel, (then called Bunker's Avenue Hotel,) together with the leasehold interest, and also all the other goods and chattels and fixtures which the grantors might "have on said premises in substitution or renewal or addition to those now contained therein, during the continuance of this trust, and also all they may have in and about the addition which is now being erected to said hotel, during the continuance of this trust, and all rights they may have under any lease for said addition to said hotel," with the

usual powers of sale in case of default in payment of the indebtedness.

Afterwards Bunker and Plowman executed and delivered two other deeds of trust on the same interest, to secure debts or running accounts to the defendants Beall & Baker, who were dealers in groceries.

In the month of April, 1871, Bunker and Plowman became embarrassed in the management of the business of the hotel. The debts secured on the property became oppressive, executions or attachments had been levied upon the chattels, and officers of the courts were in the house guarding the property levied upon, and the tenants were also in arrears for rent on account of the main building $858.34 (56), and for the addition $272.99 (60), amounting in all to the sum of $1,131.33.

In this emergency a proposition was made to substitute John Spicer as tenant instead of Bunker and Plowman. Beall, who had the exclusive control of the property for himself and his co-lessors (40), was called in and took part in the consultations. He was advised with by Bunker and Plowman at every stage of the negotiations, and also had frequent interviews with Spicer concerning the proposed transfer.—(17, 18, 22, 23, 27, 28.) The negotiations were pending for some time, and meanwhile Beall satisfied himself, by making inquiries, of the ability of Spicer, financially and otherwise, to manage the business of the hotel successfully.—(18, 22, 27.) He then became very anxious to get Bunker and Plowman out of the hotel and to get Spicer to take it (18, 22), and rendered valuable aid in consummating the transfer.—(23.) It was finally agreed amongst them that Bunker and Plowman should transfer all their interest in the hotel property and lease to Spicer, and deliver possession to him. It was agreed that Spicer should take the hotel and assume and pay all the incumbrances existing upon the property, including the two trusts held by Beall & Baker; that he should pay all the rent due from Bunker and Plowman to the lessors, and should pay Bunker

and Plowman for their interest thirty-four hundred dollars in cash. It was also agreed that the lessors should accept Spicer as tenant of the premises and as their debtor for the rent in arrears in lieu of Bunker and Plowman, and that Spicer should have three months within which to pay it (24); that the lease should be surrendered, and that Bunker and Plowman should stand discharged from all liability, not only as to the rents already due, but as to those to accrue in future. Beall also agreed with Spicer that the trust deeds held by him and Baker should not be enforced against the property until the end of the original term (17, 18, 19, 22, 23, 24), and that the lessors would renew or extend the lease for his benefit.—(17, 18, 22.)

In the execution and fulfillment of these various stipulations Bunker and Plowman signed and delivered a written transfer of all their interest in the lease and property, which instrument was shown to Beall at the time and by him approved (22, 24); and on the 29th day of April, 1871, they surrendered possession of the hotel and all their property in it to Spicer, with the knowledge and consent of Beall. From that date they had nothing further to do with the premises. Spicer on that day paid Bunker and Plowman the cash payment, ($3,400,) according to the agreement, and on the same day paid Beall on account of over-due rent the sum of $441.67; he entered into possession of the hotel and from that time to the date of the sale conducted it as a house of public entertainment. At the same time he bought a quantity of goods from Beall & Baker and paid for them, and also had an account, in his own name, opened on the books of that firm.—(18, 19, 20, 22, 23, 27.) Beall soon afterwards signed a certificate addressed to the Mayor of the City of Washington, to enable Spicer to obtain a license to keep a hotel, in which he stated that he had personally examined the premises and was satisfied that Spicer had provided himself with suitable and proper accommodations for that purpose.—(33.)

During his occupation Spicer paid to Beall for rents the sum of $2,024.98, and for merchandise purchased from

Beall & Baker $2,597.95 (21), and when his effects in the house were sold out by the complainants, he had lost in the business the sum of $13,000.—(20.)

Plowman and Bunker, during their occupation, expended for improvements on the hotel about $8,000, and Plowman had himself sunk in the house about $21,000 at the time of the transfer to Spicer.—(23.)

The short note which was given by Bunker and Plowman to Dodge was paid at maturity.—(45.) The twelve-months note was not paid, and was, on the 2d day of May, 1871, purchased from the holder by the Freedman's Savings and Trust Company.—(34, 49.) The short note given to Crosby was also paid at maturity (43), but the second or long one remains unpaid, except as to the sum of $1,750. On or about the 10th day of March, 1870 (34, 48), the Freedman's Savings and Trust Company purchased this note also from the holder of it, T. W. Soran.—(47, 53, 54.) These two notes so purchased by the Trust Company are still unpaid, and are held as part of the assets of the corporation.

On the 30th day of August, 1871, two suits on the law side of the court were instituted against Bunker and Plowman for rent of the St. James Hotel. In one of them the plaintiffs are Benjamin Beall, Alpheus Middleton, and Jessie Middleton, and the sum of $925 is claimed as the balance due.—(56.) In the other the plaintiff is Benjamin Beall, and he claims a balance of $383.31.—(61.) A writ of attachment was issued in each of these cases and was levied upon the personal property, or a part of it, in the hotel.

On the 30th day of December, 1871, two other like suits were instituted by the same parties for the rents which accrued after the last suits, and like proceedings were had.—(63, 67.)

At the date when the first suits were begun Spicer had paid to Beall all the rent due from Bunker and Plowman at the commencement of his holding, and had paid $883.65

upon his own account for rent; the rents claimed in all these suits accrued during Spicer's term.

The heirs of Benjamin F. Middleton are Alpheus Middleton, Marian Hyatt, Helen Houston, and Jesse Middleton.—(42.) Alpheus and Jesse, at the time the suits at law were instituted, were twenty-one years of age or over.—(50.)

A short time previous to the filing of the bill in this case all the personal property in the hotel was sold by the complainants, by virtue of the various deeds of trust, and of an agreement with the tenant Spicer.—(1, 5, 12, 50, 51.)

The question here is whether or not the liens created by the first two deeds of trust owned by the Freedman's Savings and Trust Company are entitled to priority of payment out of the fund in the hands of the trustees over the lien for rent claimed by the landlords. The latter claim is based upon the act of Congress of February 22, 1867, (14 Stat., 404,) which provides "that the landlord shall have a tacit lien upon such of the tenant's personal chattels upon the premises as are subject to execution for debt, to commence with the tenancy and continue three months after the rent is due, and until the termination of any action for such rent brought within the said three months."

Points and Authorities.

This lien of the landlord is purely a statutory lien, and will be strictly construed. Dillon, J., in the opinion of the court in the case of *Merrit vs. Fisher*, (19 Iowa, 354,) in commenting on a statute of Iowa somewhat similar to that in force in this District, uses this language:

"It is a species of class legislation in favor of landlords, granting them rights not given to other creditors generally. It follows that in availing himself of this special and extraordinary remedy the landlord must take it just as the statute gives it to him."

The first lien on the personal property in controversy was created by the trust deed given to secure the notes held by Dodge, and it is a vendor's lien, so far as the property men-

tioned in the schedule attached is concerned. To this extent at least it is superior to all others.—(*United States vs. N. O. Railroad*, 12 Wall., 362.)

The tenancy of Bunker and Crosby began when they took possession under the original lease, and when Crosby retired and Plowman was substituted for him, with the consent of the lessors, the first tenancy ended and the second began.—(*Smith vs. Niver*, 2 Barb., 180.)

And when Bunker and Plowman, in their turn, left the premises and Spicer entered into possession as tenant with the approbation of the lessors, the second tenancy terminated and the third began. Each one of these changes effected a surrender of the previous term, by operation of law, and created a new tenancy and a new term.—(*Thomas vs. Cook*, 2 B. & Ald, 119; *Stone vs. Whiting*, 2 Stark, 235; *Phipps vs. Soulthorpe*, 1 B. & Al., 50; *Nicholls vs. Atherston*, 10 Q. B., 944; *Dodd vs. Acklom*, 6 M. & G., 672; *Phene vs. Popplewell*, 12 C. B., (N. S.,) 334; *Hammerton vs. Stead*, 3 B. & C., 478; *Davidson vs. Gent*, 1 Hurlston & N., 744; *Whitehead vs. Clifford*, 5 Taunt., 518; *Walker vs. Richardson*, 2 M. & W., 882; *Grimman vs. Legge*, 8 B. & C., 324; *Wilman vs. Watry*, 31 Wis., 638; *Logan vs. Anderson*, 2 Doug., (Mich.,) 101; *Hill vs. Robinson*, 23 Mich., 24; *Randall vs. Rich*, 11 Mass., 494; *Hesseltine vs. Leary*, 16 Me., 212; *McKinney vs. Reeder*, 7 Watts, 123; *Smith vs. Niver*, 2 Barb., 180; *Bedford vs. Terhune*, 30 N. Y., 453; 2 Smith's Leading Cases, 696; *Amory vs. Kinnoffsky*, 117 Mass., 351; *Talbot vs. Whipple*, 14 Allen, 177; *Lamon vs. McNamee*, 10 G. & J., 117.)

There was an absolute unequivocal agreement between Beall and Bunker and Plowman that the latter should vacate and abandon the premises, and that Spicer should enter and take possession of them as the tenant of the lessors. On the faith of this agreement Bunker and Plowman abandoned the hotel with all the improvements they had made upon it, and Spicer laid out the sum of $13,000, of which $4,622.93 was paid into the hands of Beall. Under these

circumstances the landlords are estopped from denying that Spicer was their tenant, and that Bunker and Plowman were discharged. Even according to the principles asserted in the case of *Lyon vs. Reed*, 13 M. & W., 306, these landlords are estopped. Their acts themselves amount to a surrender. Here was an act done by the landlords to Spicer, the incoming tenant, and to Bunker and Plowman, the retiring tenants, "the validity of which they are estopped from disputing, and which could not have been done if the particular estate (the term of B. and P.) had continued to exist."

It was clearly the intention of all the parties to the arrangement that the lessors should look to the security of a third person (Spicer), for the rents due from Bunker and Plowman when they retired. Beall knew that Spicer had, or could command, a large sum of money, and elected that the lessors should avail themselves of this advantage. These acts are sufficient to displace a mechanic's or other statutory lien.—(*Grant vs. Strong*, 18 Wall., 623.)

The term having been surrendered, Bunker and Plowman were no longer liable for rent, and, therefore, the attachment suits against them could not affect the liens of other creditors.

The landlord's lien for the rent accruing after the entry of Spicer, commenced with his tenancy and could not displace the lien created by the trust deeds. Even if these attachment suits had been brought against Spicer the trust deeds would be entitled to priority.

The Crosby trust was given to include all the after-acquired property which might be brought into the hotel. Such mortgages are valid.—(*United States vs. N. O. R. R.*, 12 Wall., 362; *Butt vs. Ellett*, 19 Wall., 544; *Pennock vs. Coe*, 23 How., 117, and authorities there cited.) Crosby sold to Bunker and Plowman with the assent of the landlords. He received no cash, and the trust deed made to Phillips was his sole security for the purchase-money of his property. The addition was about to become incorporated

in the hotel, and the furniture might be removed into the addition. To take away this security would be inequitable.

There is no proof that any new or after-acquired property whatsoever was put into the hotel after the Crosby trust was executed, and it is fair to presume that none was added.

These actions at law are not based upon the covenants in the original lease, but are in the form of actions of assumpsit for the use and occupation of the premises. The executors, John Hyatt and Alpheus Middleton, do not sue, and only two of the four heirs of Benjamin F. Middleton are parties. Even if Bunker and Plowman were the tenants at the time these suits were brought, and responsible for the rent, it is difficult to see how such actions could perpetuate the statutory lien of the landlords. Where the legal interest is joint all the parties in interest must join in actions in form *ex contractu*.—(1 Chitty's Pl'ds, 8.) The "action" meant by the statute above cited is the common-law action, and the records of these suits are not pertinent to the issue here, nor are they effectual to continue, as against creditors, a landlord's statutory lien arising on a lease between Bunker and Plowman on one side, and Benjamin Beall, and John Hyatt and Alpheus Middleton, executors, on the other. There was no sale made under these attachments. The sale was made by the trustees, and the question is one of priority of lien; it does not involve or question the validity of the judgments, as against Bunker and Plowman.

The decree of the Supreme Court of the District of Columbia ought to be affirmed.

ENOCH TOTTEN.

Counsel for F. S. and Trust Co., Appellee.